

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the Matter of Unfair Labor Practice
Charges #26, 27-1979, combined:

Plumbers and Fitters, Local #139

and

I.B.E.W., Local #122,

Complainants,

vs.

City of Great Falls,

Defendant.

FINDING OF FACTS, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

The Complainants filed charges with the Board of Personnel Appeals alleging the refusal to bargain on the part of the City of Great Falls, a violation of section 39-31-401(1) and (5) MCA. There is no dispute that the City refused to bargain with the Plumbers and Fitters union for employees who work as maintenance plumbers. Also there is no dispute that the City refused to bargain with the Plumbers and Fitters union and with the I.B.E.W. (International Brotherhood of Electrical Workers) who jointly represent the City's plumbing and electrical inspectors. The City argues they already have a contract with the complainants by way of a multi-union or a craft council contract which the complainants are part of. The issue is whether the Plumber and I.B.E.W. are bound by the craft council contract. This hearing examiner finds the complainants bound by the craft council contract.

This RECOMMENDED ORDER is divided into the major areas of I. Introduction; II. Stipulations and Administrative Note; III. Findings of Fact; IV. Motions; V. Discussions and Conclusion of

1 Law; and VI. Recommended Order.

2 Because the Board of Personnel Appeals has no precedent in
3 the area of these unfair labor practice charges (ULPs), defense and
4 motions, I will cite federal statutes and cases for guidance in
5 the application of Montana's Collective Bargaining Act, Title 39,
6 Chapter 31, MCA (Act). The Federal Statutes will generally be the
7 National Labor Relations Act, 29 USCA, Section 151-166 (NLRA).
8 The Montana Supreme Court in State Department of Highways vs.
9 Public Employee Craft Council, 165 Mont. 249 529 P2d 785 at 787
10 (1974) approved this principle:

11 "When legislation has been judicially construed and a
12 subsequent statute on the same or an analogous subject is
13 framed in the identical language, it will ordinarily be
14 presumed that the Legislature intended that the language as
15 used in the later enactment would be given a like interpreta-
16 tion. This rule is applicable to state statutes which are
17 patterned after federal statutes. [Citing cases] Although
18 the cases which have interpreted the italicized words involved
19 private employees, the act before us incorporates the exact
20 language, consisting of 16 words, found in the earlier statutes,
21 and it is unlikely that the same words would have been repeated
22 without any qualification in a later statute in the absence
23 of an intent that they be given the construction previously
24 adopted by the courts."

25 "We think similar standards of judicial construction
26 apply in the present case. For example, section 19-102,
27 R.C.M., 1947 [Section 1-2-106 MCA] provides:

28 Words and phrases used in the codes or other statutes
29 of Montana are construed according to the context and the
30 approved usage of the language; but technical words and
31 phrases, and such others as have acquired a peculiar and
32 appropriate meaning in law, or are defined in the succeeding
section, as amended, are to be construed according to such
peculiar and appropriate meaning or definition [Emphasis
added]."

Also see State of Montana ex rel. The Board of Personnel
Appeals vs The Eleventh Judicial District of the State of Montana
598 P2d 117, 103 LRRM 2297 (1979).

33 11. STIPULATION AND ADMINISTRATIVE NOTE

- 34 1. The following stipulations were entered into by the Parties:
- 35 a. The Board of Personnel Appeals has jurisdiction in
36 the ULPS as defined by the Act, Part 4. (Transcript
37 Page 4 referred to as (Tr4)).

1 b. The Plumbers and Fitters Local #139 and I.B.E.W.
2 Local #122 are labor organizations as defined by
3 Section 39-31-103(5) MCA. (Tr4).

4 c. The City of Great Falls is a Public employer as
5 defined by Section 39-31-103(1) MCA. (Tr4).

6 2. The Parties agreed to have administrative notice taken of
7 the election for the plumbing and electrical inspectors for the
8 City of Great Falls. (Tr4). The Board of Personnel ordered the
9 following in the DETERMINATION OF APPROPRIATE UNIT on January 23,
10 1975:

11 "In accordance with MAC.24-3.8(10)-S8089 (11) [24.26.601
12 reg. 24.26.630 ARM] the Board of Personnel Appeals hereby
13 determines the modification petitioned for by the I.B.E.W.,
14 Local No. 122, AFL-CIO, and the Plumbers and Fitters, Local
15 No. 139, AFL-CIO, is appropriate, that the unit shall consist
16 of "all plumbing inspectors and electrical inspectors employed
17 by the City of Great Falls", and that an election be held to
18 determine the representative desired by those additional
19 employees in the unit included by this modification."

20 On March 6, 1975, the Board of Personnel Appeals certified
21 Plumbers and Fitters, Local #139 and I.B.E.W. Local #122 as exclu-
22 sive representatives of all plumbing and electrical inspectors
23 employed by the City of Great Falls. (Unit Determination file
24 #49, 1974).

25 III. FINDINGS OF FACT

26 After a thorough review of the briefs, exhibits, testimony
27 and demeanor of the witnesses, the following findings of fact are
28 set forth:

29 1. A Labor contract was entered into on July 27, 1976
30 between The City of Great Falls, Montana and Plumbers and Fitters
31 Local Union #139 effective from July 1, 1976 until June 30, 1979.
32 The Labor contract governs the conditions of employment for the city
33 maintenance plumbers. (Complaint Exhibit #1 referred to as (Exhibit
34 C1)). The Maintenance Plumbers Contract contains the following
35 significant articles:

36 a. Article 1, Section 2 contains the following union security
37 provision:

1 "Employer agrees membership in the Union shall be a
2 condition of employment for all maintenance employees
3 working in the City of Great Falls who are performing
4 work falling within the scope of the Union involved.
5 New employees falling under the scope of this Agreement
6 will be required by the City to clear through the Union
7 prior to hiring and will be given a dispatch slip for
8 the City's records by the Union at the time of clearance
9 provided, however, that the foregoing shall not in
10 anywise limit City's right to reject any applicant for
11 employment. It is agreed that all said employees must
12 become members of the Union within thirty-one (31) days
13 of the date of employment, and the Union agrees that
14 said employees shall have said thirty-one (31) day
15 period in which to pay Union's initiation fees in full."
16 (Exhibit C1).

17 b. The city shall contribute ten dollars toward the monthly
18 premium cost of group Health, Hospitalization and Life
19 Insurance. (Exhibit C1, Articles 5, Section 1).

20 c. The Parties agreed to settle disputes arising under the
21 contract by final and binding arbitration. (Exhibit C1,
22 Article 6).

23 d. Article 8, Section 1 provides that the contract "****shall
24 remain in full force and effect until June 30, 1979, and
25 from year to year thereafter unless notice is given in
26 writing by the Union or the Employer to the other party,
27 not less than sixty (60) days prior to June 30, 1979, or
28 prior to the expiration of any subsequent annual period
29 of its desire to modify, amend or terminate this Agreement.
30 ****". Article 8 also states: "During the terms of this
31 Agreement, and any extensions hereof no collective bargain-
32 ing shall be had upon any matter covered by this Agreement
33 or upon any matter which has been raised and disposed of
34 during the course of the collective bargaining which
35 resulted in the consummation of this Agreement. This
36 clause shall not be construed to limit, impair or act as
37 a waiver of Union's right to bargain collectively on
38 changes contemplated or effected by Employer which may
39 modify the traditional operation of the basic terms and
40 conditions herein set forth." (Exhibit C1).

41 e. After thirty day notice, the City has the right to
42 subcontract all types of bargaining unit work. (Exhibit
43 C1, Article 12).

44 f. The Parties agreed to a no strike and no lockout article.
45 (Exhibit C1, Article 14).

46 g. Schedule A provides the "present recognized jurisdiction
47 of the Plumbers *** shall be maintained." (Exhibit C1,
48 Schedule "A" #1).

49 h. Schedule A, #2 states: "Any work for the City of
50 Great Falls that ordinarily would not require a Building
51 Inspector's permit by any company, private or public,
52 shall be considered maintenance work. Any plumbing work
53 that would require a Building Inspector's permit by
54 anyone, would be considered new construction, and would
55 be contracted out by the City to regularly licensed
56 plumbing shops." (Exhibit C1).

1. The Parties agreed that maintaining and repairing water meters and related City equipment will be performed by City Maintenance Plumbers. (Exhibit C1, Scheduled "A", #4).

j. Schedule A contains the following:
"Wage rates for City Maintenance Plumbers shall be as follows:

July 1, 1976, to September 30, 1976	\$7.41
October 1, 1976, to December 31, 1976	7.52
January 1, 1977, to March 31, 1977	7.63
April 1, 1977, to June 30, 1977	7.73
July 1, 1977, to September 30, 1977	8.39
October 1, 1977, to December 31, 1977	8.51
January 1, 1978, to March 31, 1978	8.62
April 1, 1978, to June 30, 1978	8.74
July 1, 1978, to September 30, 1978	9.43 - 9.48
October 1, 1978, to June 30, 1979	9.56 - 9.61 + 1.10 Pension

For each hour or portion thereof for which an employee receives pay, the Employer shall contribute to the Plumbers and Pipefitters National Pension Fund as follows:

July 1, 1976, through June 30, 1977	-	\$0.85
July 1, 1977, through June 30, 1978	-	1.00
July 1, 1978, through June 10, 1979	-	1.15 - 1.10

(Exhibit C1, Schedule A, #7 and #8).

2. The Plumbers and fitters, Local Union #139 and the International Brotherhood of Electrical Workers Local Union #122, together entered into a labor agreement with the City of Great Falls, Montana effective from September 14, 1977 until June 30, 1979. The Labor Contract governs the conditions of employment for the plumbing and electrical inspectors. (Exhibit C2). The inspectors contract contains the following significant articles:

a. Article XXVII states the following: "*** During the terms of this AGREEMENT and any extensions hereof no collective bargaining shall be had upon any matter covered by this AGREEMENT or upon any matter which has been raised and disposed of during the course of the collective bargaining which resulted in the consummation of the AGREEMENT. This clause shall not be construed to limit, impair or act as a waiver of the CITY'S or UNION'S right to bargain collectively on changes which may modify the basic terms and conditions herein set forth." (Exhibit C2).

b. Article XXIX contains the following: "This AGREEMENT, shall continue in full force and effect until June 30, 1979, and thereafter it shall be considered automatically renewed for successive periods of twelve (12) months unless at least sixty (60) days prior to the end of any twelve (12) months effective period either party shall serve written notice upon the other that it desires cancellation, revision, or modification of any provision or provisions of this AGREEMENT. Desired revisions or

modification will be provided in writing at the time of written notice. In this event, the parties shall attempt to reach an agreement with respect to the proposed change or changes, and at least forty-five (45) days prior to the expiration date of the AGREEMENT, meeting to consider such changes shall be held by the parties. In the event the parties do not reach a written agreement by the expiration date of or in the particular year as provided herein, then this AGREEMENT shall in all respects be deemed void and terminated.****" (Exhibit C2).

- c. Schedule A, special conditions provides: "Hourly wage rates for employees covered by this AGREEMENT shall be as follows:

	<u>July 1, 1977</u>	<u>July 1, 1978</u>
Plumbing Inspector	\$6.29	\$6.84
Electrical Inspector	\$7.07	\$7.52."

(Exhibit C2, #4).

- d. The Schedule A, special conditions also provides for effective July 1, 1977, 50¢ per man hour to be paid to the eight district electrical pension fund with an increase to 75¢ per man hour effective July 1, 1978. (Exhibit C2, #6).
- e. The Plumber pension fund is to be paid 95¢ per man hour effective July 1, 1977 with the amount of \$1.10 per man hour to be paid effective July 1, 1978. (Exhibit C2, Schedule A, Special Conditions, #7).
- f. The City is to contribute 65¢ per hour to the Plumbing Inspectors Health and Welfare Plan. The City agreed to pay full cost of the Electrical Group Health Insurance Plan. (Exhibit C2, Schedule A, Special Conditions, #9).

3. A labor contract was entered into on September 14, 1977 between the City of Great Falls, Montana and the International Brotherhood of Electrical Workers Local Union #122 governing all conditions of employment for maintenance and service electrical employees. This contract expired on July 1, 1978. (Exhibit D2). The maintenance electricians contract contains the following significant articles:

- a. Article XXIX provides:
"This AGREEMENT, shall continue in full force and effect until June 30, 1978, and thereafter it shall be considered automatically renewed for successive periods of twelve (12) months unless at least sixty (60) days prior to the end of any twelve (12) months effective period either party shall serve written notice upon the other that it desires cancellation, revision or modification of any provision or provisions of the AGREEMENT. Desired revisions or modification will be provided in writing at the time of written notice.***" (Exhibit D2).
- b. The Maintenance Electricians Contract has schedule "A" which provides for maintaining the same work jurisdic-

1 tions, shift differential pay, hourly wage rate, 3% of
2 gross payment to local employee's benefit board, pension
3 fund payments, apprenticeship provisions, lead worker
4 differential pay and tool allowance. (Exhibit D2,
Schedule "A").

5 A fourth labor contract was entered into on July 27, 1977
6 between the City of Great Falls and The City of Great Falls Public
7 Employees Craft Council. The Craft Council consisted of the
8 Laborers #1334, Operating Engineers #400, Machinists #1046, Team-
9 sters Local #45, Carpenters #286 and Technical Engineers #400-B
10 unions. This old craft council contract or smaller craft council
11 contract expired on June 30, 1978. It contained schedule A, wages,
12 and Schedule B, special conditions, plus the following signature
13 page:

14 "IN WITNESS WHEREOF, the UNION and the CITY have caused
15 this AGREEMENT to be executed in their names by their duly
16 authorized representatives at Great Falls, Montana, this 16th
17 day of August, 1977.

18 FOR THE CITY OF GREAT FALLS

19 FOR THE UNIONS

20 s/
21 Mayor

22 s/
23 Laborers 1334

24 s/
25 City Manager

26 s/
27 Operating Engineers 400

28 s/
29 City Attorney

30 s/
31 Machinists 1046

32 ATTEST:

33 s/
34 Teamsters 45

35 Clerk of Commission

36 s/
37 Carpenters 286

38 (SEAL OF CITY)

39 s/
40 Technical Engineers 400-B

41 (Exhibit D14 page 16).

42 4. Some time after the 1977-78 craft council contract was negoti-
43 ated the unions informally began to talk about including more unions
44 in the craft council or coordinated bargaining structure. James L.
45 Murr, Business Representative for the International Association of
46 Machinists and Aerospace Workers, Local Lodge 1043 and chairperson
47 of the Public Employees Craft Council, wrote to his International

1 Union on January 12, 1978 seeking help with coordinated bargaining.
2 (Exhibit D9, Tr 170, 176, 181, 224, 285, 363, 364, 470, 479, 529,
3 566). The letter specifically asked for assistance in setting up
4 a procedure through which the unions could effectively bargain
5 together. The letter also asked for guidelines in negotiations and
6 ratification procedures. (Exhibit D9).

7 5. In the Spring of 1978, the unions had a few preliminary
8 meetings before negotiations to discuss coordinated bargaining.
9 (Tr. 100, 169, 181, 182). At one time or another all unions
10 having contracts with the City discussed coordinated bargaining.
11 (Tr. 169, 182).

12 Joseph J. Martin, Business Manager of Plumbers Local #139 for
13 the past ten years, did sit in on a few of the preliminary meetings.
14 (Tr 7, 100). Some of the unions had specific items, such as union
15 security clause, in their separate agreements which were quite
16 different from the old smaller craft council contract. The unions
17 with the specific items wanted to include these items in the new
18 larger craft council contract. At one of the preliminary meetings,
19 Mr. Martin talked about these specific items. (Tr 100).

20 6. At one of the preliminary meetings of the unions, Monte
21 Marzetta, Assistant Business manager for I.B.E.W. Local #122,
22 proposed the following non-underlined portion:

23 [Front Page]
24 "Great Falls Craft Council
25 COORDINATING STRUCTURE FOR THE 1978 OF GREAT FALLS
26 NEGOTIATIONS [sic]

27 In adopting the following procedures, every consideration
28 is given to retaining the collective strength of each Union
29 to obtain the best possible labor agreement for itself while
30 respecting the internal procedures of all Unions involved in
31 coordinated bargaining.

32 In order to assure the most expeditious handling of
settlement offers either before or after contract expiration
or in the course of a strike, the following procedures will
be binding on all Unions involved in the 1978 City coordinated
negotiations.

1. The coordinated negotiating committee shall be comprised
of a chairman, secretary and a member from each Local

Union involved in coordinated bargaining. - Suggest Lawyer

2. Each Local Union shall be entitled to one (1) vote on any issue coming before the coordinated negotiating committee.
3. Each Local Union shall submit proposals to the coordinated negotiating committee which shall draft the proposals and bargaining goals for the 1978 City negotiations.
4. There shall be a steering committee comprised of one (1) member from each Local Union involved in coordinated bargaining.
5. Each Local Union shall be entitled to one (1) vote on any issue coming before the steering committee.
6. When the coordinated negotiating committee and the City reach an agreement, the Agreement will be presented to the steering committee for approval.
7. If the steering committee approves the agreement, the agreement shall be submitted to the affected membership of each Local Union involved in coordinated bargaining to be voted on in accordance with their respective constitutions and by-laws. Mass Meeting Craft Council for Explanation.
8. If the steering committee rejects the agreement it shall be referred back to the coordinated negotiating committee for further negotiations.
9. If any Local Union rejects the agreement it shall be referred back to the coordinated negotiating committee for further negotiations. 2/3 can override the union that rejects.

DELETE: 10. All Unions involved in coordinated bargaining must ratify the agreement before a settlement can be reached.

It shall take 2/3/ vote of the Coordinated Negotiation Committee to override or modify reasons for the individual Union rejecting a proposal.

MASS Meeting - Explanation - Before Individual Unions vote.

[Back Page]

1. IAM
2. Laborers
3. Teamsters
4. Operators
5. Carpenters
6. Painters
7. Plumbers
8. Electricians
9. Firefighters?

Coordinated Bargaining
Great Falls Craft Council

3-16-78 next meeting. *****

(Underlined items are handwritten notes of Mr. Murr (Tr 188).

Exhibit D12. For similar Exhibit See Exhibit D35. (Tr 90, 186)).

1 Mr. Murr states that the various unions that had contracts
2 with the City agreed to enter into coordinated bargaining and
3 direct their attention to coordinating their efforts in regard to
4 negotiations. (Tr 169, 133, 177). When questioned about the note
5 on back page of Exhibit D12, Mr. Murr understood that the first
6 eight unions listed agreed to the coordinated bargaining but he
7 had nothing to support his understanding. (Tr. 185, 190). Later,
8 Mr. Murr testified that he had no knowledge as to whether all the
9 unions agreed to be bound by the proposal for coordinated bargaining.
10 (Tr 227, 228). Richard Ferderer, business representative for
11 Teamsters Local #45, stated the unions, particularly the Plumbers,
12 never agreed to the proposal for coordinated bargaining. Mr.
13 Ferderer explained that is the reason the Teamsters never signed
14 the proposal. (Tr. 423, 428, 429, 451, 433, 434). However, it is
15 worth noting that although no unions signed the proposal for
16 coordinated bargaining, almost all unions, including Mr. Federer's
17 teamsters, signed the final craft council contract.

18 7. A notice of a City of Great Falls Machinists meeting was
19 mailed to each of the members of the City Unit on March 6, 1978.
20 (Tr.209). The Notice of Meeting included:

21 "*** Subject: There will be a meeting held Tuesday, March
22 14, 1978, at 5:00 P.M. at the Labor Temple for Machinists
23 members to propose contract modifications and acceptance or
24 rejection of proposed coordinated bargaining procedures for
25 1978 [See Exhibit D12, D35]. ****". (Exhibit D11, Tr 183,
26 209).

27 8. On March 14, 1978, at the meeting for City Machinists, the
28 members present made proposals on a new contract and the member-
29 ship approved the proposed coordinated bargaining procedures.
30 (Tr. 180, 189, 228, 183, 184, 208, 209).

31 9. The following notes were taken by Mr. Ferderer of a Great
32 Falls Craft Council meeting:

"4-3-78 - 10:00 A.M. - Great Falls, MT. Craft Council
Meeting. Meeting to discuss if the crafts would all go into
the craft council. The following unions agreed that they
would go.

1 Electricians
2 Machinists
3 Labors
4 Operators
5 Painters
6 Plumbers & Fitters
7 Firefighters are trying to join.
8 Carpenters not present.
9 Didn't sign for the teamsters until we would get together
10 with the members involved. I tentitively agreed that the
11 teamsters would go subject to the feelings of the membership.
12 Will have a mass meeting with the City employees on Thurs, 5
13 April 5:00 P.M. to discuss problems.
14 Agreed to put in opening letter that we intend to bargain
15 with the coordinated bargaining unit.
16 Agreed that all costs will be divided equally between crafts
17 included [Emphasis in Exhibit]." (Exhibit D31).

18 The representatives of the various unions were present. The
19 union representatives agreed to become a party to the craft council
20 and to go into negotiations. (Tr 419, 420).

21 Looking at exhibit D11 and D31, both the machinists and
22 teamsters got approval from their membership to join the Craft
23 Council in coordinated bargaining. Mr. Marzetta explains that he
24 got approval from his membership to join the Craft Council for
25 those employees whose contract, the maintenance electricians
26 contract, expired at the same time as the old Craft Council contract.
27 Mr. Marzetta did not seek approval to join the Craft Council for
28 the inspectors and did not seek contract proposals from the inspec-
29 tors for the New Craft Council contract. (Tr 113, 126, 131). Mr.
30 Martin was never authorized to negotiate for the plumbers in the
31 Craft Council. (Tr 631).

32 10. A meeting of all union employees of the City of Great Falls
except Police and Fire was held on April 6, 1978. A notice of the
special meeting was posted and/or mailed. The special meeting was
to, among other things, explain what procedure was to be used, in
negotiations to get any ideas from the membership and to answer
any questions. A list of people in attendances was kept. Robert
Markle's name, a city plumber and member of the Plumber's Union,
appears on the second page of the attendance sheets. (Tr 26, 127,
128, 130, 139, 146, 185, 186, Exhibit C8).

1 11. On April 24, 1979, Gerald E. Pottratz, secretary, Great Falls
2 craft council and assistance business manager of the Laborer's
3 Local #1334, notified the City of Great Falls by letter as follows:

4 "Subject: Collective Bargaining
5 Contract Modification

6 Dear Sir:

7 The City of Great Falls Public Employees' Craft Council,
8 consisting of Construction and General Laborers Local 1334,
9 Operating Engineers Local 400, Machinists Local 1046, Teamsters
10 Local 45, Carpenters Local 286 and Technical Engineers Local
11 400 B, hereby open the collective bargaining agreement for
12 modification between the above mentioned Craft Council and
13 the City of Great Falls, covering wages and working conditions
14 of the employees in the various departments, including but
15 not limited to airport, water and sewer, street, garbage,
16 park, waste water treatment plant, Civic Center and any areas
17 not mentioned. [The question mark and underline by City
18 Manager. Tr 283, 284]

19 We hereby request that we meet at a time and place
20 mutually agreeable to both parties to discuss and negotiate
21 the desired changes.

22 This letter will serve as notification of contract
23 opening for all involved. Please contact me at 452-3653.

24 Sincerely,

25 Gerald E. Pottratz
26 Secretary

27 GEP:s

28 cc: Mr. Utter
29 Airport Authority

30 P.S. Please be further advised that the City of Great Falls
31 Public Employees Craft Council will be in coordinated bargaining
32 with other Local Unions. [The following are notes of
33 Doyle Williams. Tr 283, 284]
34 All unions representing city employees will be in this
35 contract." (Exhibit D16).

36 Not fully understanding the above letter, Doyle Williams,
37 Director of Personnel for the City of Great Falls, telephoned Mr.
38 Pottratz for explanation. (Tr 264, 383, 384, 396). Mr. Williams
39 reports Mr. Pottratz said that the craft council would like to
40 bargain for all people represented by labor organizations doing
41 maintenance. (Tr 284, 395, 396, 507). Mr. Williams told Mr. Pottratz
42 it was a good idea. (Tr 237, 284, 396).

1 Mr. Martin defines "**** coordinated bargaining, as far as I'm
2 concerned, is when you're bargaining with the group. I don't know
3 the exact terminology that the dictionary uses. But coordinated
4 bargaining to me would be when you're bargaining with the entire
5 group****[and] you agree to accept whatever everybody else settles
6 for." (Tr 81:22-82:7). Mr. Martin states that he never agreed to
7 be bound by any coordinated bargaining unless an agreement was
8 reached on the entire contract including schedule A and wages.
9 (Tr 85).

10 The City had indicated to several of the union representatives
11 in the past that the City would like to negotiate one agreement.
12 The City also said "Why don't you [unions] all throw your name in
13 a hat and we'll pull out one and that's the one we'd like to deal
14 with." The City did not care which union they worked with. (Tr
15 113:2-3, 92, 131, 132). The City never made an offer on coordinated
16 bargaining. (Tr 133).

17 12. On April 24, 1978 Mr. Marzetta wrote the following letter to
18 the City of Great Falls:

19 "April 24, 1979 [sic]

20 Mr. Doyle Williams
21 Personnel Director
22 City of Great Falls
23 P.O. Box 1609
24 Great Falls, MT. 59403

25 Dear Sir:

26 Pursuant to Article XXIX of the current agreement between
27 the City of Great Falls and Local Union 122 of the International
28 Brotherhood of Electrical Workers, Union hereby gives notice
29 to open the entire agreement to negotiate changes.

30 Local Union will be in coordinated bargaining with the
31 other Unions of the Great Falls Craft Council.

32 Respectfully yours,

Monte Marzetta
Assistant Business Mgr.
Local 122, I.B.E.W."

(Exhibit D3).

The above letter did not set forth which agreement the union

1 wished to change - Exhibit C2, the Inspectors Contract or Exhibit
2 D2, the Maintenance Electricians contract. (Tr 111). Both contracts
3 have the same basic article XXIX (Duration) except for the expiration
4 date. The City never questioned which contract the union wished
5 to change. (Tr 121).

6 13. On May 16, 1978, the first negotiations meeting was held with
7 the following people present:

8 City
9 Doyle Williams
10 W.P. Utter
11 Tom Sullivan
12 Bob Duty

Unions
Earl Brant, Teamsters #45
John Hinkle, Painters #260
George Gordon, Operating Engineer #400
Curt Wilson, Laborers #1334
Monte Marzetta, I.B.E.W. 122
Jack Ball, Operating Engineer #400
Joseph J. Martin, Plumbers 134
P.A. McAllister, Carpenters 286
James L. Murr, Machinists

13 (Exhibit D4A, D17).

14 Exhibit D4A-M is a group signed attendance sheet from each bargain-
15 ing session through July 18, 1979. Some of the attendance sheets
16 may have been lost. (Tr 117, 118, 120, 148, 618, 620, 624).

17 At this first meeting, the parties covered the ground rules
18 for negotiations. (Tr 285, Exhibit D17). Mr. Williams' notes
19 state the following:

20 "5/16/78 Crafts Council

- 21 1. Crafts council does not want press involved, all releases
22 should be joint. Demands should be kept confidential.
23 All City Unions involved.
24 * * * * *
- 25 7. Plumer [Plumbers] and inspectors involved if multi-year
26 contract only. 2nd year and 3rd?" (Exhibit D17).

27 The Parties exchanged their first demands and discussed them
28 item by item. (Tr 98, 111, 221, 237, 238, 284, 285, 287, 454, 455,
29 554, 567). The unions proposed the following:

30 "[Page 1]
31 UNION PROPOSAL

32 Agreement - Include All Unions

Article 1 RECOGNITION AND PURPOSE: No change

* * * * *

[Page 3]

Article XXIX DURATION: (Change) Provide for three year
agreement.

1 SIGNATURE PAGE: (Change) Provide for all Unions in co-ordinated
2 bargaining.

- 3 1. Wages - Scheduled A: Across the board adjustment \$2.00
4 per hour first year, second and third years \$1.50 per
5 hour each year.

6 SCHEDULE B

7 Special Conditions

- 8 1. SHIFT DIFFERENTIALS: (Change) 25¢ and 50¢.
9 *****

10 Add to schedules those specific items from the I.B.E.W.
11 Agreement, and Plumbers Agreement which are specific to those
12 craft Unions."

13 (Exhibit D1, D13. Notes Deleted).

14 The above union proposal was prepared by sifting through and
15 condensing the individual union proposals that were submitted by
16 each union from their own special meeting like the machinists
17 meeting of March 4, 1978. (Tr. 111, 139, 141, 191, 485, 508).
18 All unions had input into the union proposal and all the
19 unions reviewed the proposal after Marzetta's secretary typed the
20 proposal. (Tr. 111).

21 Mr. Marzetta confirms that:

- 22 a. The above union proposal makes reference to including
23 language from the Plumbers Agreement;
24 b. The inclusion of the language from the plumbers
25 agreement was not the intent of Mr. Martin;
26 c. He, Mr. Marzetta was aware of Mr. Martin's feelings
27 from prior discussions but, helped prepare and present
28 the proposal anyway (Tr. 112); and
29 d. The Plumbing and Electrical Inspectors were not even
30 considered in the above union proposal. (Tr 101).

31 Mr. Martin states that:

- 32 a. He never saw the above union proposal (Tr 56, 57, 58);
33 b. He heard the other union representatives discussing
34 the proposal at the negotiating meeting of May 16, 1978
35 (Tr 58);
36 c. The other union representatives may have stated
37 "The agreement includes all unions," but he denies if
38 they said it (Tr 58);
39 d. He made it clear to everyone present, he was there
40 to negotiate portions of the basic contract which might
41 affect his next negotiations (Tr 58);
42 e. He heard the other union representatives say to

1 "add to schedules those specific items from the I.B.E.W.
2 agreement, and plumber agreements which are specific to
3 those craft unions," but again he replied his contract
4 had a year to go and he would not negotiate schedule A
5 or wages (tr. 59);

6 f. In the beginning, the parties discussed that if they
7 could reach an agreement on the basic contract and later
8 negotiate schedule A and wages, the Plumbers could be
9 possibly included but, never once did everybody agree
10 (Tr. 636);

11 g. He never gave the city any written documents contest-
12 ing the proposal because he was not bound by it (tr 59);
13 and

14 h. He never waived his right to coordinate bargaining
15 with the other unions and city. (tr 80).

16 Mr. Marr states that:

17 a. At the time of the above union proposal, it was the
18 written position of the Craft Council that all unions
19 including I.B.E.W. and Plumbers were included in the
20 Agreement (tr 193);

21 b. The above union proposal includes all unions whose
22 contracts expired basically at the same time as our
23 smaller Craft Councils Contract did (Tr 196, 197, 232);

24 c. At our first meeting, the parties discussed the plumbers
25 and I.B.E.W.'s contract that expired June 30, 1979
26 and the Plumbers and I.B.E.W. were to be involved in
27 language negotiations but not wage negotiations. (tr
28 198).

29 Mr. Pettratz confirms that:

30 a. He cannot remember any other written document, other
31 than the above union proposal, that was given to the
32 City regarding who would be participating in the craft
33 council negotiations (Tr 513);

34 b. The above union proposal suggested the Electricians and
35 the Plumbers from beginning would be involved to some
36 extent in the craft negotiations (Tr 514, 515);

37 c. The Plumbers said they would like to be in the contract
38 if it was negotiated for more than one year with a
39 separate schedule A (Tr 498); and

40 d. The inspectors were going to negotiate separately. (Tr
41 515).

42 Mr. Williams reports that at our first meeting we discussed
43 the Craft Council. The City "...came in with a one-year proposal."
44 The Unions "...said under those terms they could not because they
45 still had a year to go on their contract; but if there would be a
46 multi-year contract, then they would be included. So from our
47 very first meeting, I thought that the plumbers and inspectors

1 would be covered by this contract." (Tr 396: 10-16, 190, 241).

2 Mr. Marzetta testifies as follows:

3 "The day we all met prior to even meeting with the City,
4 we knew what a turmoil we went through the previous year
5 because the painters were negotiating separate; the carpenters
6 were separate; the inspectors' negotiations were different.
7 Even our basic, the one, D-2, [Exhibit D2, Maintenance Electricians Contract] was a different agreement. In fact, we
8 reached D-2 and the inspectors' agreement the same year. But
9 they're two different documents. And rather than go through
10 the same turmoil again, meeting in different rooms, we all
11 probably realized that the basic contract language the City
12 was going to shove down our throats anyway, or they would
13 have forced us out on another strike. And that was what we
14 were trying to avoid, and that's why the unions got together
15 to try to negotiate the basic contract language, which Joe
16 [Martin] said if he could reach an agreement on the wages the
17 following year, and we did too as far as the inspectors go,
18 that we could probably live with that language that everybody
19 else was living with. And that's basically how the whole
20 thing got started." (Tr 609: 20-610:13).

21 Mr. Martin testifies as follows:

22 "[Hilley]: Joe, did you first start off negotiating for the
23 plumbers, the maintenance plumbers?

24 [Martin]: Right. Well, I didn't sit in and negotiate for
25 the maintenance plumbers at all. I only sat in negotiating
26 possibly for basic language of a contract that we may be
27 affected by for the next year when our contract expired. To
28 explain it further, we were kind of forced to be sitting in
29 and have a part to that basic language. I have probably the
30 smallest amount of people that I represent for the City. And
31 if a year later we got into negotiations in any way regarding
32 the basic language and got into a strike situation on that
33 portion of the contract, every other craft probably would
34 have said, "Well, why should we support them when we're stuck
35 with this contract. Let him be stuck the same way."

36 And I felt, as long as I might be possibly be stuck with
37 the contract in the future, I wanted some input into the
38 language, in the basic language.

39 [Hilley]: Across the bargaining table, did you make that
40 clear?

41 [Martin]: Very clear to everybody. In fact, there was a lot
42 of disagreement from the other crafts. I told them at that
43 time that was my position; and I never changed it because my
44 Local had never authorized me to negotiate wages or anything
45 different than what I stated." (Tr 630: 11-631:8).

46 *****

47 "[Hilley]: Directing your attention back to April of 1978,
48 May, June, or any time back in 1978. Did you ever agree with
49 the City to bring your plumbers under the contract that was
50 being negotiated.

51 [Martin]: At the beginning we discussed that if we could
52 reach an agreement on the basic language and then sit down
53 later and negotiate during the year the Schedule A, which
54 includes special conditions and wages, we could possibly be
55 included. But never once was everybody committed. We just
56 discussed that it was possible to be included that way." (Tr
57 636: 4-13).

1 Tom Sullivan, City Parks and Recreations Director, remembers
2 "**** there was some discussion at the start of the negotiations
3 that it was going to be more of a pleasant task bargaining with
4 one unit rather than 10 or 11 different units. And the problem
5 that they had in the past was that they had so much time spent on
6 each separate unit; and it was brought out at this point that this
7 group represented the entire Crafts Council, which involved all of
8 the units that were present." (Tr 529: 6-13).

9 Mr. W.F. "Bill" Utter from the Airport Authority, not repre-
10 senting the City was allowed to sit in and participate to some
11 extent in negotiations because the Airport Authority had a contract
12 coming due with the laborers and the Teamsters unions. Mr. Utter
13 attended the negotiations and sat on the management team at the
14 request of the laborers and the teamsters unions in order to speed
15 up the Airport Authority's negotiations later. All parties had
16 the understanding that Mr. Utter was involved with the Craft
17 Council negotiations but, the Airport Authority was not bound by
18 the Craft Council contract and the Airport Authority would negotiate
19 their own contract later. Mr. Martin states that he was also an
20 observer, the same as Mr. Utter, and that he is not bound by the
21 Craft Council contract either. (Tr 41, 85, 288, 405, 534, 535,
22 546, 547, 548, 552). The record contains no physical evidences of
23 the understanding between the City, the Craft Council and the
24 Airport Authority.

25 14. The second negotiations meetings was held on May 22, 1978
26 with Mr. Williams, Mr. Martin, Mr. Marzetta and others present.
27 (Exhibit D4B).

28 15. The third negotiations meeting was held on May 30, 1978 with
29 Mr. Williams, Mr. Utter, Mr. Martin, Mr. Marzetta and others
30 present. (Exhibit D32, TR 498).

31 Mr. Ferderer's notes of this meeting state the following:
32

1 10:20A City give the Union their proposals.

2 10:30 City said they would give us an answer at the next
3 meeting if they would include Plumbers [Plumbers],
4 Painters, and electrician in the craft council with
the 2nd year to be negotiated.

***** (Exhibit D32, Tr. 421,465).

5 John C. Ball, union representative for operating engineers, stated
6 that according to his notes, Mr. Williams presented the City's
7 proposal and in discussion on the painters, electricians, plumbers,
8 and inspectors being part of this agreement, Mr. Williams said he
9 would take the question to the City fathers. (Tr 471). Mr. Pottratz,
10 reading from his notes, states "We [plumbers] would like to be in
11 the contract if negotiated for more than one year, separate schedule
12 A." (Tr 510: 24-511:1, 498, 501).

13 16. The fourth negotiations meeting was held on June 5, 1978 with
14 Mr. Williams, Mr. Utter, Mr Martin, Mr. Marzetta and others present.
15 (Exhibit D4C, D33, Tr 456).

16 Mr. Murr's notes reflect the following:

17 "6-9-78 - 10: A.M.
18 City Carpenter) can be added
19 Electrician)
20 Painters)

21 Inspectors and Plumbers - problem - as their agreements
22 expire June 30, 1979.

(Exhibit D7).

23 Mr. Murr explains his notes as follows:

- 24 a. While the unions were including the carpenters, electrici-
25 cians and painters into the agreement, we had a specific
26 problem with the inspectors and plumbers because their
27 agreement did not expire until June 30, 1979 (Tr. 172);
- 28 b. The City said that the "...Carpenters, electricians,
29 and Painters can be added; but there was an understanding
30 that the inspectors and plumbers would have a problem.
31 They cannot be [added] because their agreement expired
32 June 30, 1979" (Tr 222:22-25); and
- 33 c. The city indicated the "...inspectors and plumbers
would have to be excluded from craft council negotiations
in view of the fact that their agreement had one more
year to run" while, unions were trying "...to include
them in the 1978 agreement, which was done for those
people. . .[whose]. . .contract expired at the same
time. . ." as ours. (Tr. 232:5-7, 232: 16-17).

Mr. Ferderer's notes reflect the following:

1 18-20). After refreshing his memory, Mr. Pottratz states that the
2 city agreed to put carpenters, electricians, and painters in the
3 agreement at that meeting. (Tr 500, 501).

4 Mr. Ball reading from his notes, states "Add painters and
5 electricians and carpenters into the agreement if more than one-year
6 agreement. Plumber and electrical inspectors will have to be
7 worked into agreement, Scheduled A." (Tr 487:11-14, 473). Mr.
8 Ball set forth his understanding, "As far as I was concerned, they
9 [Martin and Marzetta] were bound by it for the body of the agree-
10 ment; but for their schedule A or their wages, they had to take
11 that on themselves." (Tr 486: 6-8, 477, 479, 483, 485, 488,
12 489). Mr. Ball defines body of the Agreement as working conditions,
13 mostly. (Tr 491).

14 Mr. Williams had the following exchange:

15 "[Hilley]: Did you take the position with the union that as
16 far as the inspectors and plumbers were concerned that their
17 agreement would expire June 30, 1979 and that you would have
18 to deal with them at that time?

19 [Williams]: No.

20 [Hilley]: You did not?

21 [Williams]: No.

22 [Hilley]: What did you inform the plumbers and the I.B.E.W.?

23 [Williams]: My proposal was a one-year contract. The Crafts
24 Council was a three-year contract. My position was that if
25 we had a one-year contract, I didn't believe they could be
26 included; and I'm sure they agreed for a one-year contract.
27 If there were to be a multi-year contract, they would be
28 included." (Tr 239: 13-25).

29 In addition to the above, Mr. Williams proclaims there was never
30 any discussions as to whether they would be included or not after
31 the first meeting and that it was his firm belief they would be
32 included in a multi-year contract. (tr 241, 244, 245, 249, 264,
285, 360, 397). Mr. Williams cannot show where he wrote down the
agreement on the inclusion of the Plumbers and Inspectors in a
multi-year contract. (tr 249).

17. A negotiations meeting was held on June 12, 1978 with Mr.
Williams, Mr. Marzetta and others present. The transcript and
exhibits contained no record of Mr. Martin or Mr. Utter being

1 present. (Exhibit D4F, D33). Mr. Williams received ERISA Language
2 to review with the City Attorney. (Exhibit D33).

3 18. A negotiations meeting was held on June 19, 1978 with Mr.
4 Williams, Mr Martin, Mr. Marzetta and others present. I have no
5 record of Mr. Utter being present. (Exhibit D4D, D33).

6 Mr. Ferderer's notes of June 19 reflect the following:

7 "[Page 2]

8 * * * * *

9 10:30 Doyle Williams stated he has authority to extend
10 contract for 30 days with Retro Pay if settled
11 within

12 * * * * *

13 Union proposes Art 4 (union security) of electrician
14 to Plumbers contract.

15 11:05 The above was proposed to the city.

16 [Back of Page 2]

17 6-19-78

18 11:50 A.M. Joe Martin stated that if city does not go along
19 with his proposal re: Union security he wants
20 nothing to do with the craft council [Council]"

21 (Emphasis in Exhibit, Exhibit D33, Tr 423)

22 Mr. Ferderer explains that Mr. Martin did attend meetings after
23 June 19, but, not as frequent. (Tr 424, 425).

24 Mr. Pottratz stated that during the negotiation session, the
25 Plumbers and Inspectors suggested that if all the special conditions
26 were incorporated into the body of the contract they might have a
27 tentative agreement. But, the Plumbers and Inspectors made it
28 clear they were not going to give away items they had worked hard
29 for many years to achieve. (Tr 505).

30 19. A negotiations meeting was held on June 21, 1978 with Mr.
31 Williams, Mr. Marzetta and others present. I have no record of
32 Mr. Utter or Mr. Martin being present. (Exhibit D4E, D33).

Mr. Ferderer's notes reflect the setting aside of Articles 9,
10, and 11 until a Laborers Union representative could be present
and negotiate the Articles. (Exhibit D33, June 21, page 1).
Several times one of the parties at the table would delay discussion
of a proposal until a given representative could be at the negotia-
tions. Some times the parties would sign off the proposal anyway
because the parties know how a given representative felt about the

1 proposal. (Tr 400, 441, 442 Also see finding 30.).

2 20. A negotiation meeting was held on June 22, 1978 with Mr.
3 Williams, Mr. Marzetta, Mr. Martin and others present. I have no
4 record of Mr. Utter being present. (Exhibit D4M). Mr. Perderer's
5 notes do not reflect Mr. Martin being present. In this instance,
6 I put credance on Exhibit D4M over D33 because Exhibit D4 is an
7 individually signed roster of the negotiations meetings.

8 21. A negotiations meeting was held on June 23, 1978, with Mr.
9 William, Mr. Martin, Mr. Marzetta and others present. I have no
10 record of Mr. Utter being present. (Exhibit D4G.)

11 Mr. Martin states that he "**** made some comments regarding
12 the basic language that I possibly might be bound by in our next
13 contract, but I never did negotiate. *** one of the people at the
14 negotiation sessions had told me that, "You're not bound, so keep
15 your mouth shut." (Tr 50:4-8). Some of the other witnesses state
16 that Mr. Martin did participate, that Mr. Martin is not shy and,
17 that Martin spoke out more than anyone else except the spokesman
18 at the time. (Tr 50, 113, 121, 202, 203, 209, 315, 316, 403, 406,
19 407, 530). Looking at the demeanor of Mr. Martin and of the other
20 witnesses plus Mr. Martin's interjection on pages 279-280 of the
21 transcript, credibility must be placed on the other witnesses'
22 statements that Mr. Martin was a strong participant.

23 Mr. Williams gives the following version of the teamsters
24 telling Mr. Martin to keep his mouth shut that occurred during a
25 negotiations session in late June 1978 (Tr 400):

26 "[Hilley]: Do you remember a conversation when Joe [Martin]
27 was trying to talk and the teamsters told him to shut up and
28 said it was none of his business because it was a teamsters
contract they were negotiating that day? Do you remember
that?

29 [Williams]: I believe that it was a one-year contract, and
30 it was also something in Schedule A or on the addendum we
were talking about. It was probably manning. I'm not sure
31 what it was. But that was one of the things that the teamsters
had in there. Yes, I remember. I didn't think it was a very
32 heated statement; but Joe, I think Joe left that day. They
may have hurt his feelings." (Tr 406: 15-25)

1 Mr. Ferderer gives the following account of the statement:

2 "[Hilley]: Didn't you tell Joe [Martin] once to shut up and
3 forget about it because you were negotiating for the teamsters
and not Joe?

4 [Ferderer]: Gess, I forgot all about that, Joe; didn't you?

5 [Hilley]: In other words, what I'm getting at, each craft
voted for each craft; isn't that correct?

6 [Ferderer]: Basically, yes.

7 [Hilley]: And they negotiated for each craft, right?

8 [Ferderer]: Yes." (Tr 438: 25-439:7)

9 During negotiations, Mr. Ferderer thought Mr. Martin was making
10 negotiations difficult and Mr. Ferderer was hostile about Mr.
11 Martin's conduct. During one meeting Mr. Ferderer and Mr. Martin
12 had a discussion out in the hall about Mr. Ferderer's displeasure.
13 22. The City of Great Falls set forth the following on June 23,
14 1978:

15 TO: Members of the Great Falls Crafts Council

16 SUBJECT: Contract Extension

17 Per our discussion, the City of Great Falls agrees to
18 extend the terms and conditions of our existing agree-
19 ments for thirty (30) days.

20 If by July 31, 1978, the City and Crafts Council have
21 reached agreement on a new contract, the terms and
22 conditions of that agreement will be made retroactive to
23 July 1, 1978.

24 If by July 31, 1978, the City and Crafts Council have not
25 reached an agreement on a new contract, the provisions
26 of this extension expire and become null and void.

27 s/ W. Doyle Williams
28 Personnel Director

29 Agreed to upon ratification of Employees involved.

30 s/ James L. Murr
31 6-23-78."

32 (The underlined part is handwritten agreement. Exhibit D36).

After answering he did not know if the contract extension applied
to the plumbers and inspectors, Mr. Ball stated, over objection,
that he could not see why the Plumbers and inspectors would need
an extension because they still had a contract. (Tr 491, 493).

23. A negotiations meeting was held on June 26, 1978 with Mr.
Williams and others present. I have no record of Mr. Martin, Mr.

1 Utter or Mr. Marzetta being present. (exhibit D4H, D33).

2 Mr. Williams had the following exchange:

3 "[Waite]: I'm going to direct you to June 26th. Do you
4 recall any discussions during that session about the use of
plumbers at the airport?"

5 [Williams]: There was a comment made by Mr. Martin about why
6 did the City use City plumbers at the airport. And I told
him that * * * (Tr 290:21-25).

7 In this instance, I give no credibility to the above exchange
8 because the meeting was only 2 hours long (Exhibit D33) and because
9 to give credibility to the exchange would decrease the credibility
10 of the signed roster of the meeting and decrease the credibility
11 of Mr. Ferderer's notes of the meeting. Mr. Williams was not
12 reading from his notes.

13 24. A negotiations meeting was held on July 5, 1978 with Mr.
14 Williams, Mr. Martin, Mr. Marzetta and others present. (Exhibit
15 D4I). Mr. Ferderer's notes reflect Mr. Utter being present. I
16 put credance on Exhibit D4I for reasons stated in finding No. 20.

17 25. Exhibit D33 has notes of a short July 6, 1978 negotiations
18 meeting with Mr. Williams, Mr. Marzetta and others present.

19 26. A negotiations meeting was held on July 7, 1978 with Mr.
20 Williams and others present. I have no record of Mr. Utter, Mr.
21 Martin or Mr. Marzetta being present. (Exhibit D4J, C12).

22 27. A negotiations meeting was held on July 10, 1978 with Mr.
23 Williams, Mr. Utter, Mr. Marzetta and others present. I have no
24 record of Mr. Martin being present. (Exhibit D4K, C12).

25 28. Mr. Williams tells of a July 12, 1978 negotiations meeting
26 with among other things, a discussion of a reduced rate of pay for
27 new-hires and an agreement on CETA and unskilled labor. Mr.
28 Williams believes Mr. Martin was present. (Tr 291, 292, 293). I
29 have no other record of this meeting and I give no credibility to
30 Mr. Williams' above statement because Mr. Ferderer's notes of July
31 10, 3:30 p.m. state "Adjourned until 10 A.M. 7-17-78." (Exhibit
32 C12).

1 29. A negotiations meeting was held on July 17, 1978 with Mr.
2 Williams, Mr. Utter, Mr. Marzetta, Mr. Martin and others present.
3 (Exhibit D4k).

4 Before this meeting, Mr. Forderer's notes reflect minor
5 economic negotiation on insurance premium cost, holidays, hot
6 meals and reduced rate of pay for new-hires. By this time, the
7 parties have agreed to many of the articles in the body of the
8 contract. (Exhibit B33, C12). Mr. Martin agrees everything in a
9 contract is a cost item. (Tr 79).

10 Mr. Sullivan states the parties began discussing wage offers
11 on or about July 17th or 20th. (Tr 531,). The City made the
12 first economic offer of (Tr 113), in part,

- 13 a. 28 cent increase an hour, across the board, effective
14 July 1, 1978;
- 15 b. Increase insurance premium payments, increase shift
16 differential pay, increase foreman pay, increase lead-
17 worker pay, increase unskilled labor pay; and
- 18 c. 35 cent increase an hour across the board, effective
19 July 1, 1979. (Tr 512, 556).

20 The unions made an economic offer in reply to the City's offer of,
21 in part, one dollar increase an hour effective July 1, 1978 and 50
22 cents increase an hour plus a cost of living adjustment effective
23 the second year. (Tr 557). The City counter offered, in part,
24 with 5 percent increase an hour across the board for the first
25 year and 5.5 percent increase an hour across the board for the
26 second year (Tr 557).

27 During one of these negotiations meetings, Mr. Martin walked
28 out of the negotiations. (Tr 32, 51, 53, 65, 113, 114, 230, 513,
29 519, 522, 605, 617, 622, 627, 640). Mr. Martin had the following
30 exchange:

31 "[Waite]: And you were present when economic proposals were
32 discussed?
[Martin]: Very slightly for other crafts. But I did not
stay. I left when they started discussing them.
[Waite]: You always left?
[Martin]: Yes, I had no business there. It didn't concern
me; I had no business. I made it mighty clear that I was not

1 getting involved in their negotiations.

2 [Waite]: Are you saying that you actually, physically got up
and left a meeting?

3 [Martin]: Most of the meetings that they started to negotiate
4 wages. As a matter of fact, I attended one where they started
to negotiate wages and then I left. And I didn't attend any
more sessions regarding wages.

5 [Waite]: But it was your testimony that you attended sessions
in July 1978?

6 [Martin]: Possibly, I don't recall them exact dates. I
have no records on the dates." (Tr 65:2-18).

7 Mr. Martin states the following as his understanding:

8 "[Hilley]: Can you give us approximate dates of these oral
9 conversations?

10 [Martin]: Well, to begin with, in '78 when they were negotiat-
ing a contract with the Crafts Council and I was sitting in
11 for the basic language of the contract, when they completed
all of their basic contract and started in the wages, I told
Doyle Williams at that time that we have another year to go
12 on both contracts, the inspectors and the maintenance plumbers,
that we would be available to negotiate that contract any
13 time during the year prior to June 30, 1979. He seemed to
agree and then on various other occasions whenever I was down
14 to the Civic Center, I'd stop into Mr. Williams' office and
also ask him when he would be willing to sit down. And he'd
say, "We've got lots of time."

15 The last time I seen him in person was at a grievance
16 that the operating engineers had, and I happened to be sitting
in on the grievance prior to that. I asked him when we would
17 sit down, the time was drawing to a close, and he said,
"Well, as soon as the budget is finalized with the city,
18 we'll be able to sit down and discuss it."

19 Other communications were in writing, but these were
verbal." (Tr 31:22-32:17, 51, 53, 633).

20 Mr. Williams has the following account of Mr. Martin walking
21 out of negotiations:

22 "[Williams]: In trying to remember the specific meetings,
somewhere in early July when I had made my first proposal on
23 money, it was a one-year contract and I was proposing the
money for it. Mr. Martin excused himself and said that we
24 were talking about economic items, and he had no business
there and he left. That was for the one-year contract.

25 [Waite]: Did he return to any further sessions after that?

26 [Williams]: Yes, he did. He was present later when we
talked two-year contract with economic items." (Tr 290:
8-16).

27 Mr. Pottratz and Mr. Marzetta, relying on their memory, each
28 states Mr. Martin did leave in the middle of the negotiations
29 meeting of July 17. (Tr 513, 517). Mr. Sullivan has no knowledge
30 that Mr. Martin stopped attending the meetings. (Tr 530).

31 30. A negotiations meeting was held on July 18, 1978 with Mr.
32 Williams, Mr. Utter, Mr. Marzetta and others present. I have no

1 record of Mr. Martin being present. (Exhibit D4L, C12).

2 Mr. Williams, reviewing very scratchy notes, tells of talking
3 primarily about the IBSW and Mr. Marzetta proposing an additional
4 73¢ an hour on top of 5 and 5.5 percent for members Mr. Sherlock,
5 Mr. Mattson, Electronic Technicians, and Mr. Argall, Maintenance
6 electrician. (Tr 295). Mr. Ball has the following exchange:

7 "[Waite]: I'm going to direct you to your July 18, 1978,
8 notes and ask you to read them to yourself.

9 [Ball]: [Witness complies] Okay.

10 [Waite]: On that date, did the union take a caucus and
11 decide not to make a proposal because of the absence of
12 several union representatives?

13 [Ball]: We came back from a caucus, and we said that we
14 could not commit ourselves for the plumbers and the electrician
15 and the painters because they was not present.

16 [Waite]: Isn't it true that what your notes show is that you
17 took a caucus and decided among yourselves that you could not
18 make an offer, a commitment, because these other union repre-
19 sentatives were absent?

20 [Ball]: Yeah, we couldn't talk for them.

21 [Waite]: And you decided this among yourselves during the
22 caucus, did you not?

23 [Ball]: Well, no. Hell, way back in the beginning of the
24 negotiations it was decided every craft would take care of
25 their Schedule A and their different problems and wages."

26 (Tx 475: 19-476:12).

27 Looking at Exhibit D33 and Exhibit C12, both Mr. Ferderer's
28 notes, I find that he periodically wrote a recap of the issues.
29 Notes for June 19, June 22, July 5 reflect such recaps. (Exhibit
30 D33). Notes for July 6, 1978 state the following recap "open
31 issues to be discussed [Articles] #7, #9, #10, #19, #24, #29,
32 Schedules A & B." (Exhibit D33). Mr. Ferderer's notes of July
33 18, 1978 has the following recap:

34 "Agreement agreed to

35 Page 1 to be agreement cover

36 Add Plumbers [Plumbers] and Elect [Electrician] to and
37 painters.

38 Art 1, as is * * * * (Exhibit C12).

39 31. On July 19, 1978, a meeting of the City Craft Council employ-
40 ees was held with the City proposal being explained to the employ-
41 ees by Mr. Ball, Mr. Ferderer, Mr. Murr, Mr. Pottratz and Mr.
42 Egan. At 6 p.m. the employees split up by crafts to vote on the
43 proposal. I have no record of Mr. Martin or Mr. Marzetta being

1 present. The City proposal was rejected. (Exhibit C12).

2 32. On July 25, 1978 a negotiations meeting was held under the
3 direction of I.K. McLaughlin, Federal Mediation and Conciliation
4 Services, with Mr. Williams, Mr. Utter, Mr. Marzetta and others
5 present. (Exhibit C12).

6 The unions made a six part proposal including a proposal for
7 a two year contract with raise of 75¢ per hour across the board
8 each year, all classifications. (Exhibit D12, Tr 296, 558, 569).
9 The City replied with a proposal which included a raise of 31¢ per
10 hour across the board effective 7/1/78 and a second raise of 36¢
11 per hour across the board effective 7/1/79. The unions counter
12 proposal on CETA, M.O.B. insurance and wages plus agreed to a 25¢
13 per hour reduction in rate of pay for new-hires, time of pay day
14 and withdraw the issue of final and binding arbitration. (Exhibit
15 D12).

16 Mr. Marzetta can not remember if Mr. Martin was at the July
17 25 meeting (Tr 117) but, Mr. Ferderer, from his notes, agrees that
18 Mr. Martin was not present. (Tr 457, Exhibit C12).

19 Mr. Marzetta proposed a formula for the distribution of the
20 wages increase to be applied at the next meeting. (Tr 298, 116).
21 "This formula was simply to take the rate that the position was
22 currently being paid, divide it by the average rate for the whole
23 crafts council, * * * *, that would give you a factor that you
24 would multiply the 35 cents an hour and the 40 cents an hour by."
25 Mr. Williams explains. (Tr 297:23-298:3).

26 33. A negotiations meeting took place on July 26, 1978.

27 Mr. Pottratz took the following notes of the July 26, 1978
28 meeting:

29 "July 26, 1978 City Negotiations - Airport
30 10:00 A.M. Union explained the method by which we want %
wage increase figured.
31 City offered 39¢ first year, 39¢ second year.
Insurance city offered all increase first year. Employees
32 CETA - as last offer,
12:00 Noon Break

1 1:30 Reconvened
 2 D.W. [Mr. Williams] said they need CETA under CETA regs.
 3 H & W as previous offer.
 4 City offered 35¢ across the board first year
 5 40¢ second.
 6 2:00 Union concussed.
 7 2:20 Called city back and asked for their figures on what
 8 each craft would get.
 9 D.W. said a laborer - would get 34¢ first year.
 10 Laborer 39¢ 2nd year.
 11 Teamster 34¢ first year.
 12 39¢ 2nd year
 13 Operator 36¢ first year
 14 41¢ 2nd year
 15 Machinist 37¢ first year
 16 43¢ 2nd year
 17 Electrician Operator 35¢ first year
 18 40¢ 2nd year
 19 Electrician Technician 43¢ first year
 20 49¢ 2nd year
 21 Electrician 44¢ first year
 22 51¢ 2nd year

23 Adjourned at 3:20" (Exhibit C13, also see Exhibit D7).

24 Explaining his notes, Mr. Pottratz states that he wrote down what
 25 was put on the blackboard by Mr. Williams. Mr. Williams was
 26 putting on the blackboard the exact raise each was to receive
 27 based on the unions formula. Mr. Pottratz did not ask why the
 28 inspectors and plumbers raises were not put on the blackboard. (Tr
 29 520, 521). The classification of electricians excludes the inspectors.
 30 (Tr 525, 526). Mr. Pottratz states that he has no memory of Mr.
 31 Martin being at the July 26 meeting (Tr 520) and adds "In fact, I'd
 32 say he wasn't but---" (Tr 522:8-9).

33 Mr. Marzetta's notes state:

34 *7-26-78 10:00 AM
 35 Discussion on wage rates : 33¢ and 39¢
 36 1:30 PM cities offer of 35¢ pr/hr 1st year 40¢ prhr 2nd yr
 37 Unions proposal on wage rates
 38 Benchmark of 6.851 = average wage
 39 Formula - All classification [Division] No of classification
 40 = 6.85,
 41 7% = .4795 or 48¢
 42 6.85
 43 +.48
 44 7.33 new base rate

45 Classification [Division] 6.85 = % factor X 7.33 = new rate
 46 per hour

1 Increase per hour

2

	1st year	2nd year
3 Labor	.34	.38
4 Teamster	.34	.39
5 Operator	.36	.41
6 Machinist	.37	.43
7 Carpenter	.37	.42
8 Painter	.38	.42
9 Maint. Elect	.44	.51
10 Elect. Tech	.43	.49
11 W.P. Operator	.35	.40* (Exhibit D7, Tr. 145).

12 Mr. Marzetta states that:

- 13 a. He is positive that his notes reflect exactly the offer
14 made by the city and all classifications (Tr 153, 602);
15 No one questioned why the plumbers and inspectors wages
16 were not listed (Tr 602);
- 17 b. Mr. Martin was not present at the July 26 meeting (Tr
18 605, 618, 627);
- 19 c. At the close of negotiations, he discussed with Mr.
20 Williams a few things that were omitted, the special
21 conditions for maintenance electricians and electronic
22 technicians; He wanted Mr. Williams to include the
23 special conditions under Schedule A from the maintenance
24 electricians contract items No. 4, 5, 6, 7 (Tr 596, 607,
25 611, 613);
- 26 d. He did not at any time, discuss the inspectors special
27 conditions with Mr. Williams and he cannot recall any
28 specific negotiations for the Plumbers' special condi-
29 tions (597, 609); and
- 30 e. Using our wage raise distribution formula, we took all
31 classifications which we felt were involved in these
32 negotiations and came up with \$5.85 average wage per
33 hour; We did not use the plumbers and inspectors wage
34 in figuring the average wage (144, 147, 156); Earlier,
35 Mr. Marzetta stated the average hourly wage was \$6.69
36 (Tr 116); The inspectors and plumbers wages were not
37 agreed to at the table (Tr 145, 146, 157, 262); and
- 38 f. The inspectors were discussed at one of the final meet-
39 ings and the only thing he can recall was the inspectors
40 still had another year to go on their contract; He has
41 no recall of any discussions about the inspectors after
42 that. (Tr 602).

43 The notes of Robert Duty , Superintendent of streets for the
44 City of Great Falls, state the following in part:

45

	"Union proposal \$.48 base	City
46 Operator - 98% = \$.47		\$.35 \$.40
47 Water plant		
48 Sig. Tech. - 120% = \$.575		\$.43 \$.49
49 Elect. 124% = \$.595		\$.44 \$.51

1	1	Laborer	93.9% = \$.45	\$.34	\$.36
	2	Teams.	96% = \$.46	\$.34	\$.39
	3	Machinist	104.5% = \$.50	\$.37	\$.43
	4	Oper.	100.4% = \$.48	\$.36	\$.41"
	5	(Exhibit C14).			

6 Robert Duty states that:

- 7 a. The classification listed in the above notes were copied
- 8 off the blackboard as written by Mr. Williams (Tr 574,
- 9 580, 581);
- 10 b. In explaining the above notes, the parties used the formula
- 11 that was agreed upon; The union proposed a 48 cents per
- 12 hour base raise and the city offered a 35 cents and 40
- 13 cents per hour base raise; He copied the above figures
- 14 as they were required by certain individuals and put on
- 15 the blackboard (Tr 586); The reason the Plumbers and
- 16 Inspector classification was not listed is because no
- 17 one requested them to be figured - not omitted (Tr 575,
- 18 576); and
- 19 c. He believes Mr. Martin attended all bargaining sessions
- 20 (Tr 567, 591).

21 Mr. Williams states that:

- 22 a. The formula for the wage raise is for everybody not just
- 23 some people; The formula itself is constant (Tr 299,
- 24 383); He figured the average wage using every employee
- 25 in the bargaining unit to be \$6.69 per hour; The union
- 26 figures of \$6.95 per hour average wage are wrong; The
- 27 parties used the City's figures; He figured the average
- 28 wages at his offices and the figures are not in his
- 29 notes at the hearing (Tr 258, 259, 290); Mr. Marzetta
- 30 and he had a discussion on computing the average wage,
- 31 but did not discuss why the plumbers and inspectors were
- 32 not added to the union's average wage (Tr 384, 385);
- 33 b. During the discussion on wages, and after he agreed to
- 34 use the formula, we figured 35 and 40 cents per hour
- 35 base raise to the different classifications as they were
- 36 requested; We figured only the classifications that
- 37 were requested; The parties did not have a list saying
- 38 "this is what we would approve" or "this is what we
- 39 would take" (Tr 298, 299);
- 40 c. After we got all through, the operating engineers said
- 41 they would take 35 and 40 cents raise per hour without
- 42 applying the formula; The I.B.E.W. said they would take
- 43 35 and 40 cents for operators, 43 and 49 cents for
- 44 electronic technicians, 44 and 51 cents raise per hour
- 45 for the electricians; This is a deviation from the
- 46 formula and what we had agreed to (Tr 299);
- 47 d. He gave the union a final offer on July 26; He was only
- 48 authorized to make the final offer for 48 hours; If the
- 49 unions did not accept the final within 48 hours, the
- 50 final offer would be withdrawn; After a union caucus,
- 51 Mr. Murr said to the City an agreement had been reached
- 52 at the table and the unions would try to sell the agree-
- 53 ment to their membership; The unions asked if the City
- 54 could help notifying the employees about the vote on the

1 agreement; The City agreed (Tr 297, 299, 300, 301,
2 302);

3 e. He asked either Mr. Murr, Mr. Marzetta or just the group
4 in front of me "What happens if one or more of your
5 membership does not accept this offer? and they replied
6 "that's my problem," or "that's our problem, not yours."
7 (Tr 303, 364, 404); He was not told by Mr. Murr that
8 every union had to vote to accept contract (Tr 366);
9 and

10 f. He believes Mr. Martin was present on July 26; At this
11 meeting, as before, both Mr. Martin and/or Mr. Marzetta
12 said the offer was not enough money; Mr. Martin and/or
13 Marzetta did not think the inspectors and plumbers would
14 accept the offer; Mr. Marzetta even mentioned where the
15 previous City negotiator had promised to rectify a wage
16 situation with the inspectors (Tr 246, 300, 302, 303,
17 379, 396, 402, 406, 407).

18 In addition to the above at the July 26 meeting, Mr. Williams was
19 requested by Mr. Marzetta to add the special conditions or schedule
20 A or appendix from the old contract(s) to the new contract. The
21 parties did not discuss the special conditions item by item. (Tr
22 361, 362, 375, 376, 388). Mr. Williams had the following exchange:

23 "[Hilley]: When you moved from one-year agreements to two-year
24 agreements, at what point did the issue of inspectors
25 and plumbers come into being?

26 [Williams]: What do you mean specifically?

27 [Williams]: As far as whether or not they were included?

28 [Williams]: There was never any discussion as to whether
29 they would or would not be included after our first meet-
30 ing. At that meeting, it was my firm belief that they would
31 be included if it was a multi-year contract. And after that
32 I never talked about plumbers or inspectors. We were talking
33 about everybody" (Tr 241: 8-17).

34 "[Hilley]: Well, I'm asking you which is your way of negoti-
35 ating a collective bargaining agreement?

36 [Williams]: Well, I'll answer that question again. Hopefully
37 I won't have to answer it again after this time. I was
38 requested at the last meeting, a statement was made the
39 special conditions from whatever it was, it was not there.
40 It was true; it wasn't there because we did a hell of a lot
41 in those last days. Any my answer was simply, "I'll go back
42 and put it in."

43 [Hilley]: Who asked you, now?

44 [Williams]: Monte Marzetta.

45 [Hilley]: Monte Marzetta asked you. Was Monte Marzetta very
46 specific as far as what should have been there or not there.

47 [Williams]: He said the special conditions in the Appendix."
48 (Tr 255: 3-16)

49 "[Williams]: ****at the same time, Marzetta reminded me

1 that language from the appendix from both, from the two
2 contracts, the I.B.E.W. contract and the inspectors' contract
3 had not been added; and at that time I assured him that I
4 would go into the contract and add the language from all
5 three contracts." (Tr 300:22-301:1).

6 "[Hilley]: Could we be more specific about this. Did Mr.
7 Marzetta specifically request certain items to be put in
8 there and certain items not to be put in there?

9 "[Williams]: No, he did not. On the last day when we were
10 winding things down, he said, "Hey, we don't have the items
11 in the addendum from the I.B.E.W. contract and the inspectors
12 contract in there." And I said, "Fine, I will take those
13 that we haven't negotiated, put them together, and stick them
14 in the contract." And I did, and he never called me to
15 object to it, and he signed the contract, or Mr. Eagen did." (Tr 368: 13-22).

16 "[Hearing Examiner]: You mentioned that Mr. Marzetta asked
17 about this attachment or these addendums. In your mind, what
18 was he asking for?

19 [Williams]: Those things in the Appendix concerning pensions,
20 insurance, and stuff like this.

21 [Hearing Examiner]: Of which contract, his electrical?

22 [Williams]: Both electrical and plumbers and electrical
23 inspectors.

24 [Hearing Examiner]: If I understand it right, it was already
25 agreed to that the traffic technicians, et cetera, whatever
26 else was covered by that contract or series of small contracts,
27 they would all be under the C-3 agreement.

28 [Williams]: They had agreed to that, yes.

29 [Hearing Examiner]: So, when Mr. Marzetta asked for these
30 addendums, you thought he was asking for which ones?

31 [Williams]: Both the I.B.E.W. and the inspectors because the
32 majority of those will be included on that last day.
(Tr 396: 10-24). (Also see Tr. 251, 252, 253, 254, 257, 268,
269, 330, 335, 359, 361, 362, 378, 387, 388).

33 Mr. Williams has no notes on the subject of the special conditions
(Tr 251, 253, 254, 271, 361, 362, 388).

34 Mr. Martin has no recall if he was present on July 26. He
35 did attend a bargaining session in July 1978 in which Mr. Williams
36 made an economic offer to the craft council but at that point he
37 excused himself saying "This does not concern me," and left the
38 meeting. (Tr 60, 62, 63, 64, 65, 53, 80).

39 34. On July 27, 1978, a meeting of all city craft employees was
40 held. The employee signed a roster and set forth their local
41 union number as they entered the big hall in the labor temple.
42 After the union representatives explained the tentative agreement,

1 the employees divided into local union groups for further discus-
2 sion and voting. The Explanation and discussion was from the union
3 official's notes for no tentative contract was produced. No wages
4 or special conditions were discussed for the plumbers or inspectors.
5 (Tr 142, 143, 166, 449, 509, 517, 518, 608, 615).

6 No inspectors were asked to the meeting, signed the roster or
7 voted on the tentative agreement. Mr. Martin never took any part
8 of the tentative agreement back to the plumbers. No plumber signed
9 the roster. Mr. Martin did not attend the meeting. (Exhibit D7,
10 C15, Tr 33, 85, 126, 136, 142, 143, 517, 518, 597, 606, 614, 615,
11 450).

12 Mr. Murr called Mr. Williams and said, "You have a contract.
13 It has been ratified." Mr. Williams replied, "I will have the
14 contract typed and I will deliver it out to the labor temple. You
15 can go over it with the other business agents and get back to me
16 if there are any problems and if not, have it signed." (Tr 301;
17 12-13, 301; 20-23, 301, 302, 304, 365).

18 35. Mr. Williams had the contract prepared and typed from notes
19 he had taken and from articles that had been agreed to. (Tr 176,
20 324, 330). Mr. Williams' notes contain a mark up, a master list
21 of items tentatively agreed to. During the negotiations, when the
22 parties agreed to something, Mr. Williams would add the item to
23 the make up red. (Tr 399, 247). The Williams' mark up is as
24 follows:

25 "MARK-UP
26 [Page 1]

27 THE CITY OF GREAT FALLS PROPOSAL TO THE CRAFT COUNCIL

28 ARTICLE I PURPOSE OF AGREEMENT

29 This AGREEMENT is entered into between the CITY OF GREAT
30 FALLS, MONTANA, hereinafter called "CITY", and the CITY OF
31 GREAT FALLS PUBLIC EMPLOYEES CRAFT COUNCIL, consisting of
32 Laborers 1334, Operating Engineers 400, Machinists 1046,
Teamsters 45, and Technical Engineers 400-8. Add Painters,
(plumbers, inspectors, can not be added), Electricians,
Carpenters, hereinafter referred to as the "UNION". The
intent and purpose of this AGREEMENT is to: * * * * * (The
underlined parts are Mr. Williams' handwritten mark up.

1 Exhibit C10).

2 Mr. Williams had the following exchange about the mark-up:

3 "[Hilley]: I notice in your file under Article I, can you
4 identify where you have marked markup?

5 [Williams]: It's marked in red.

6 [Hilley]: What is that document?

7 [Williams]: That's the '77 contract markup as they marked up
8 there's.

9 [Hilley]: When was that marked up?

10 [Williams]: During the course of negotiations from May
11 through July.

12 [Hilley]: Would that have been the earlier portion or the
13 later portion of the City of Great Falls markup?

14 [Williams]: It would have probably have been the second or
15 third meeting.

16 MR. HILLEY: Directing your attention to the complainant's
17 proposed Exhibit 10, would you look at that markup and go
18 through it and tell me whether or not this is a one-year or
19 a two-year agreement.

20 THE WITNESS: That article appears to be missing from my
21 notes.

22 [Hilley]: What's that?

23 [Williams]: That article appears to be missing from my
24 notes.

25 [Hilley]: Then can you explain to me if the City is submitted
26 markups and can't tell whether it's a one-year agreement or
27 two-year agreement, how in the world can the City indicate
28 whether or not the plumbers and electricians are being included
29 in the negotiations or not?" (Tr 242:2-243:5).

*** Objection ***

30 THE WITNESS: The answer is simply that none of my notes
31 taken by themselves would be the total answer and whether or
32 not it was going to be a one-year or two-year contract was
33 not decided until the last two or three meetings. So, the
34 other notes would tell you whether it was a one- or two-year
35 contract." (Tr 244:3-8)

36 "[Hilley]: So, if you can't tell from your own markup whether
37 it's a one- or two-year agreement, my question goes to how
38 could the other side ever tell?

39 [Williams]: I can't speak for the other side, but my notes
40 say it's a two-year contract, not this.

41 [Hilley]: Your markup doesn't say this?

42 [Williams]: No, the markup is not the total.

43 HEARING EXAMINER: Please let the record show when he said,
44 "not this," he was pointing to Exhibit C-10. Continue.

45 MR. HILLEY: I notice that your markup, you're indicating in
46 your own mind, let's say subjective mind, that you're talking
47 about a two-year agreement; is this your testimony?

48 THE WITNESS: No.

49 [Hilley]: Are you talking about a one-year agreement?

50 [Williams]: I'm saying that my notes starting with the dates
51 that we discussed a two-year contract will tell you that it's
52 a two-year contract.

53 [Hilley]: Will you go through your notes and compare that
54 with C-10 and tell me whether that's a one- or two-year
55 contract in your own mind.

56 [Williams]: No. I said the notes would tell you that it's a
57 two-year contract; the total notes, not this.

58 [Hilley]: Would you go to which note tells me that's a

1 two-year contract.

2 [Williams]: Yeah. I believe starting around July the 17th
3 is when we started seriously considering a two-year contract.

4 [Hilley]: When you started talking about a two-year contract,
5 Does that date, July 17, 1978, does that coincide with your
6 markup?

7 [Williams]: I really can't answer that because the markup
8 was marked up from the first negotiation to the last. So,
9 there could be sessions in here that was marked up in May and
10 some in July; and this was July the 17th.

11 [Hilley]: Mr. Williams, I think you did indicate to me,
12 though, that this markup, in going through it, was a later
13 markup; is that correct?

14 [Williams]: No, I didn't say that.

15 [Hilley]: What is it, an earlier markup or a later markup?

16 [Williams]: To repeat my answer, I said that this page
17 probably occurred on the second or third negotiating session;
18 and the rest of it occurred throughout.

19 HEARING EXAMINER: Let the record indicate that when he said,
20 "this page," he's pointing to the first page of C-10." (Tr
21 244:19-245:14).

22 *****

23 "[Hilley]: All right, I'll rephrase it. Can you look at
24 your proposal, which you call your markup, and I'm referring
25 to C-10, and tell me if many concessions had been made by one
26 or the other party, had very few concessions been made?
27 We're trying to determine the date or the approximate date of
28 that document, which is identified as C-10.

29 [Williams]: Most of the stuff, in fact, probably all of the
30 stuff you find in red are things that we both agreed to, that
31 we had, both parties had agreed to. And that could have been
32 the first day to the last day." (Tr 247:13-22).

33 "MR. HILLEY: --rather than get into all of this. I notice
34 where it says on C-10, I notice where you have written in
35 there, I presume this is your writing; isn't it?

36 THE WITNESS: Uh-huh. [Yes]

37 [Hilley]: I notice where you've written in there, plumbers,
38 inspectors, cannot be added.

39 [Williams]: First meeting.

40 [Hilley]: Does it say first meeting?

41 [Williams]: No, it doesn't.

42 [Hilley]: You told me in the beginning you didn't know where
43 that markup had developed during the process of negotiations.
44 Now, you're telling me it's the first meeting?

45 [Williams]: That's what I said before, that this document
46 was marked up in that probably in the second or third meeting.

47 [Hilley]: Can you tell me if it was marked up during the
48 second or the third meeting about when the parties had moved
49 to the two-year agreement?

50 [Williams]: No. As I've testified before, early in the
51 negotiations, we decided that they would be in if it was a
52 two-or-more year contract. This markup occurred early in
53 negotiations. The two-year agreement wasn't decided on until
54 the middle of July. This was in May.

55 [Hilley]: Mr. Williams, you keep notes, I presume; and
56 you've got a real thick set of notes there. Now, can you
57 show me in your notes where, when you moved to a two-year
58 agreement, you switched over to attempting to negotiate for
59 the plumbers and the inspectors?

60 [Williams]: I don't have to. It was agreed at the first
61 meeting that if it was a two-year contract they were included.

62 [Hilley]: Can you show me in your notes where you have

1 written that down?
2 [Williams]: No." (Tr 248:12-249:19)

3 Mr. Williams took notes of the first meeting in which he set forth
4 "The plumbers and inspectors involved in multi-year contract only.
5 2nd year and 3rd?" (See finding 13, Exhibit D17). Mr. Williams'
6 exchange continued:

7 "VOIR DIRE,

8 BY MR. WAITE:

9 [Waite]: I'm going to hand you what has been marked as C-10
10 and ask you to tell me what it is.

11 [Williams]: It's a markup of the old contract to reflect the
12 changes that we agreed on.

13 [Waite]: Can you testify as to whether this contains all
14 changes made during negotiations with the Craft agreement?

15 [Williams]: It would not have contained those that were made
16 right at the end.

17 [Waite]: Was this markup presented to the union, the Craft
18 Council unions, or any union at any time?

19 [Williams]: No.

20 [Waite]: This document was for your personal use?

21 [Williams]: That's correct.

22 [Waite]: And you used this document in conjunction with your
23 notes?

24 [Williams]: Yes." (Tr 250:1-17).

25 "[Hearing examiner]: Exhibit C-10, how was this produced?

26 [Williams]: I can't really say. I think it's well, if
27 you're asking who typed it, I think this is a copy of the
28 previous agreement that I was just making notes on.

29 [Hearing Examiner]: In other words, as each meeting took
30 place, you added more notes to it and more notes to it.

31 [Williams]: No, no, this is not-- Item C-10 was something I
32 had typed up and then I started adding notes to it. This is
not the contract.

[Hearing Examiner]: My question is, when were the notes
added to it?

[Williams]: During the negotiations. When we agreed on
something, I put it in there.

[Hearing Examiner]: In other words, day by day by day, or
meeting after meeting you kept it up to date?

[Williams]: Yeah. These were just notes. Actually, this is
not a copy of the contract.

[Hearing Examiner]: On the front page of C-10, written in
red, "cannot be added." What does that mean in relation to--

[Williams]: Because my proposal was was a one-year contract,
and this was made very early in negotiations. I have another
mark-up where I put it in when we started with a two-year con-
tract and then I put it in. It is a contract, last year's --
the previous year's contract; and I've got it right there."
(Tr 398:25-399:22).

30 Mr. Williams states that "Through all of the meetings, never once,
31 never once, did anyone say they would not be covered.*****" (Tr
32 396: 18-19).

1 Mr. Murr kept a mark up during negotiations as follows:

2 " A G R E E M E N T ****

3 THIS AGREEMENT, made and entered into at Great Falls as
4 of the 17th day of July, 1977, by and between the CITY OF
5 GREAT FALLS, MONTANA, hereinafter referred to as the "CITY",
6 and the CITY OF GREAT FALLS PUBLIC EMPLOYEES CRAFT COUNCIL,
7 consisting of Laborers #1334, Operating Engineers #400,
8 Machinists District Lodge 29, Teamsters Local #45, Carpenters
9 #286, and Technical Engineers 400-B, hereinafter referred to
10 as the "UNION", have mutually agreed as follows:
11 I.B.E.W. #126, Plumbers #139, Painters Local #260 - *****
12 (The underlined parts are Mr. Murr's handwritten markup,
13 Exhibit D14, Tr 193, 144, 195, 232, 233).

14 Mr. Murr had the following exchange about the markup:

15 "[Waite]: I'm going to direct your attention to Page 1 of
16 the Defendant's Exhibit 14, the first paragraph below the
17 title "AGREEMENT". Now, isn't it true that you included the
18 names of I.B.E.W. Local and the plumbers' Local as being
19 unions included within the City of Great Falls Public Employ-
20 ees Craft Council?

21 [Murr]: Also the painters it says there. Yes, there's
22 significance in that we included unions whose contracts were
23 for the people who were up for the same time that ours were.
24 But not for any others, plumbers or inspectors." (Tr 195:
25 11-20).

26 *****

27 [Waite]: I'm going to hand you Defendant's Exhibit 14, which
28 you previously identified and has been admitted. Isn't it
29 true that on that exhibit you included namely the plumbers
30 union 139 as notes contained on that document?

31 [Murr]: Yes.

32 [Waite]: You were attempting to include the plumbers as well
as the electricians and the painters unions, at least at the
time those notes were made on the document?

[Murr]: Yes. (Tr 232: 25-233:8).

33 Mr. Duty kept a markup of negotiations which has a notation of
34 an agreement to add the I.B.E.W. and plumbers to the Craft Council
35 contract. Mr. Duty stated that both the I.B.E.W. and plumbers
36 specifically agreed to be added to the Craft Council contract.
37 (Tr 582-587, 566).

38 Mr. Sullivan's notes contain no commitment by any party who
39 was bound or not bound by the contract. (Tr 551, 552). Mr.
40 Marzetta's notes contain no statement of who was bound or not
41 bound by the contract. (Tr 621, 622). Mr. Martin did not take any
42 notes of the negotiations because he says he was not bound by any
43 agreement. (Tr 43, 44, 49, 53, 64).

44 16. Mr. Williams delivered the New Craft Council Contract to Mr.

1 Murr. (Tr 330). Mr. Williams told Mr. Murr that as soon as every-
2 body signed the new contract, he would take it to the City Commis-
3 sion. (Tr 305). The New Contract contains the following signifi-
4 cant articles:

5 a. "A G R E E M E N T

6 THIS AGREEMENT, Made and entered into at Great
7 Falls as of the 27th day of July 1978, by and between
8 the CITY OF GREAT FALLS, MONTANA, hereinafter referred
9 to as the "CITY", and the CITY OF GREAT FALLS PUBLIC
10 EMPLOYEES CRAFT COUNCIL, consisting of Construction and
11 Laborers #1334, Operating Engineers #400, Machinists
12 District Lodge 29, Teamsters Local #45, Carpenters #286,
13 International Brotherhood of Electrical Workers Local
14 #122, Plumbers and Pipefitters Local #139, Painters
15 Local #260, and Technical Engineers 400-B, hereinafter
16 referred to as the "UNION", have mutually agreed as
17 follows:

18 ARTICLE I

19 RECOGNITION AND PURPOSE:

20 The CITY recognizes the respective UNIONS signatory
21 hereto as the exclusive representatives of all of its
22 employees who are subject to the terms of this AGREEMENT,
23 for the purpose of collective bargaining in respect to
24 rates of pay, wages, hours of employment, working condi-
25 tions and all other conditions of employment. The CITY
26 recognizes that the employees covered by the AGREEMENT
27 are primarily maintenance and service employees. The
28 present recognized jurisdiction of the Craft Unions
29 within the Craft Council shall be maintained during the
30 term of this agreement." (Page 1 of Exhibit C3).

- 31 b. A union security section that requires all employees to
32 become and/or remain members of the union, and requires
the CITY to notify the union of new hired employees.
The Section has no requirements of a union dispatch slip
for new employees. (Article IV, Page 2 of Exhibit C3).

33 c. "ARTICLE V
STRIKES AND LOCKOUTS:

34 5.1 The parties hereto pledge their efforts to
35 reach agreement on any difficulties that arise during
36 the life of this AGREEMENT.

37 5.2 It is mutually agreed that there will be no
38 strikes, lockouts or cessations of work by either party
39 on account of labor difficulties during the life of this
40 AGREEMENT.

41 5.3 It is agreed that the above provision shall
42 not apply in the event no collective bargaining settlement
43 is reached at the termination date of this AGREEMENT.

44 5.4 It shall not be a violation of this agreement
45 to refuse to cross a legal picket line.

46 5.5. The UNION and the CITY agree that "strikes" or
47 "lockouts" will not prevent the UNION and the CITY from
48 providing emergency operation of the water and wastewater
49 systems that are essential to the health, welfare and

1 safety of the public.

2 5.6 The UNION may "strike" the CITY on any issue
3 that the CITY does not agree to settle by binding arbi-
4 tration. The CITY may "lockout" the UNION on any issue
5 that that UNION does not agree to settle by binding
6 arbitration." (Page 4 of Exhibit C3).

7 d. "ARTICLE VI

8 MANAGEMENT RIGHTS:

9 The CITY shall have the right to operate and manage
10 its affairs in such areas as but not limited to:

- 11 (a) direct employees;
- 12 (b) hire, promote, transfer, assign, and retain employees;
- 13 (c) relieve employees from duties because of lack of
14 work or funds or under conditions where continuation
15 of such work is inefficient and nonproductive;
- 16 (d) maintain the efficiency of CITY operations;
- 17 (e) determine the methods, means, job classifications,
18 and personnel by which the CITY operations are to
19 be conducted;
- 20 (f) take whatever actions may be necessary to carry out
21 the missions of the CITY in situations of emergency;
- 22 (g) establish the methods and processes by which work
23 is performed including the utilization of advancements
24 of technology.

25 The foregoing enumeration of the CITY Management's
26 rights shall not be deemed to exclude other functions
27 not specifically set forth. The CITY, therefore, retains
28 all rights not otherwise specifically covered by this
29 AGREEMENT." (Page 5 of Exhibit C3).

30 e. "ARTICLE VII

31 EMPLOYEE RIGHTS/GRIEVANCE:

32 7.1 A grievance is defined as a dispute or disagree-
ment raised over a specific provision of this AGREEMENT.

33 7.2 Procedures:

34 *****

35 Step 3. Appeals to the City Manager must set
36 forth, in writing, the nature of the grievance, the
37 facts on which it is based, the provisions of the agree-
38 ment allegedly violated, and the remedy requested. The
39 City Manager or his designated representative shall have
40 ten (10) working days to make his decision and settle the
41 dispute to the satisfaction of the UNION or to form a
42 Grievance Committee composed of six (6) persons -- three
43 (3) from the CITY and three (3) from the UNION excluding
44 anyone directly involved in the dispute. A decision on
45 the grievance reached by a majority of the Committee and
46 rendered within ten (10) days after the City Manager's
47 decision shall be binding on both parties. If the
48 Committee cannot reach a majority decision, the City
49 Manager or his designated representative, and the employee(s)
50 and/or his (her) representative will meet within five
51 (5) working days to decide the procedure that would best
52 resolve the dispute.

53 Step 4. If no other procedure is mutually acceptable,
54 (i.e., fact finding, mediation); both parties may agree
55 to submit the dispute to binding arbitration. If agree-
56 ment to submit to binding arbitration is not reached,
57 either party may take legal or economic action no sooner
58 than seven (7) days and no later than sixty (60) days
59 after the non-agreement.

1 Step 5. If arbitration is selected, it shall be in
2 accordance with the following: Each party alternately
3 strikes two (2) names from a list of five (5) arbitrators
4 provided by either the American Arbitration Association
5 or Federal Mediation Service, by mutual consent another
6 process may be utilized. The arbitrator shall have
7 thirty (30) days in which to render a decision.

8 7.3 No. grievance shall be considered or processed
9 unless it is submitted within thirty (30) days after
10 first occurrence. There shall be no suspension of work
11 during the grievance appeal process.

12 *****" (Page 6 of Exhibit C3).

13 f. "ARTICLE XXVII

14 WAIVER AND AMENIMENT CLAUSE:

15 No past practices, policies, or rules or prior
16 agreements shall alter the intent or the meaning of the
17 specific articles of this AGREEMENT. During the terms
18 of this AGREEMENT and any extensions hereof no collective
19 bargaining shall be had upon any matter covered by this
20 AGREEMENT or upon any matter which has been raised and
21 disposed of during the course of the collective bargaining
22 which resulted in the consummation of this AGREEMENT.
23 This clause shall not be construed to limit, impair or
24 act as a waiver of the CITY's or UNION'S right to bargain
25 collectively on changes which may modify the basic terms
26 and conditions herein set forth." (Page 10 of Exhibit
27 C3).

28 g. "ARTICLE XXIX

29 DURATION:

30 This AGREEMENT shall continue in full force and
31 effect until June 30, 1980, and ***** (Page 19 of
32 Exhibit C3).

33 h. "IN WITNESS WHEREOF, the UNION and the CITY have caused
34 this AGREEMENT to be executed in their names by their
35 duly authorized representatives at Great Falls, Montana,
36 this _____ day of _____, 1978.

37 FOR THE CITY OF GREAT FALLS FOR THE UNIONS

38 s/ John Bulen
39 Mayor

40 s/ Gerald E. Pottratz
41 Laborers

42 s/ Chris Cherches
43 City Manager

44 s/ George Gordon, Pres.
45 Operating Engineers #400

46 [NO SIGNATURE]
47 City Attorney

48 s/ James L. Murr
49 Machinists #29

50 ATTEST:

51 s/ Richard Perderer
52 Teamsters

53 [NO SIGNATURE]
54 Clerk of Commission

55 s/ P.A. McAllister
56 Carpenters #286

57 (SEAL OF CITY)

58 s/ William Egan
59 International B. of Elec.
60 Workers #122

[NO SIGNATURE]
Plumbers and Pipefitters #139

[NO SIGNATURE]
Painters Local #260

a/ George Gordon, Pres.
Technical Engineers #400-B

[NO SIGNATURE]
Plumber & Electrical Inspector
Plumber & Pipefitters #139
I.B.E.W. #122."

(Page 21 of Exhibit C3).

1. "SCHEDULE A
CITY OF GREAT FALLS, MONTANA and CITY OF GREAT FALLS
PUBLIC EMPLOYERS CRAFT
COUNCIL

During the term of this AGREEMENT, the following wages
will be paid:

UNION	JOB *****	7/1/78	7/1/79
PLUMBERS AND PIPEFITTERS #139	Plumber	9.56	10.17
PLUMBER AND ELECTRICAL INSPECTORS	Plumbing Inspector	6.84	7.33
	Electrical Inspector	7.52	7.99
	*****" (Exhibit C3).		

2. "SCHEDULE B
CITY OF GREAT FALLS, MONTANA and CITY OF GREAT FALLS
PUBLIC EMPLOYERS CRAFT
COUNCIL

SPECIAL CONDITIONS
In addition to the above wages, the following Special
Conditions shall be provided:

- *****
2. Union Pension Plan: The CITY agrees to pay directly
to any pension plan designated by any of the Unions
that are a party to this AGREEMENT an amount speci-
fied by said UNION for all hours compensated for by
the CITY. This payment shall be in lieu of an equal
amount of base pay.

10. Special Conditions - Inspectors:
- (a) The UNION shall have jurisdiction over these employ-
ees of the CITY classified as Plumbing and Electrical
Inspectors only.
- (b) Applicants for the position of Plumbing or Electrical
Inspector shall possess at least one of the following
qualifications:
1. Master's license in the plumbing or electrical
field.
 2. Certification as a degreed, registered engineer
with a minimum of one year's work experience
in the appropriate discipline at the time of
employment.
 3. A bachelor's degree in engineering with a

- 1 minimum of three years work experience in the
2 appropriate discipline at the time of employment.
3 4. A minimum of five years work experience in the
4 appropriate discipline at the time of employment.
5 c. In the event a vacancy occurs, the CITY will attempt
6 to hire an individual with the qualifications set
7 forth in item one (1) above. Upon notice of termina-
8 tion of an employee, the CITY will request, from
9 the UNION, a list of qualified personnel who can be
10 considered for employment. Such a list shall be
11 provided by the UNION no later than two (2) weeks
12 after termination. If, after receipt of said list
13 from the UNION, the CITY finds no acceptable candidate
14 for employment, then the CITY can hire an individual
15 with any one of the qualifications set forth in
16 items two (2), three (3), or four (4) above.
17 d. Any inspector assigned to the Building Inspection
18 Division, who is qualified, whether covered by this
19 AGREEMENT or not, may be required to perform the
20 normal duties of any other inspector assigned to
21 said Division when:
22 1. Said inspector is absent due to illness,
23 vacation or other authorized absence;
24 2. An emergency situation exists (i.e., flood,
25 fire, earthquake, or other act of God).
26 3. Necessary for efficiency of operation."
27 (Exhibit C3).

28 k.

"ADDENDUM "C"

UNION INSURANCE AND PENSION PLANS

29 As of July 1, 1978, the City's contribution to the
30 various union insurance and pension plans are as follows:
31 *****

32 3. I.B.E.W.:

- A. It is agreed that in accord with the National
Employees Benefit Agreement entered into between
the National Electrical Contractors Association and
the International Brotherhood of Electrical Workers
on July 1, 1977, as amended, that unless authorized
otherwise by the National Employees Benefit Board,
the CITY will forward monthly to the designated
Local Employees Benefit Board an amount equal to
three (3) percent of his gross monthly labor payroll,
which the CITY is obligated to pay to the Maintenance
Electrician and Electrical Inspector employees only
in this bargaining unit, and a completed payroll
report prescribed by the National Board. The payment
shall be made by check or draft and shall constitute
a debt, due and owing to the National Board on the
last day of each calendar month, which may be
recovered by suit initiated by the National Board
or its assignee. The payment and the payroll
report shall be mailed to reach the office of the
appropriate Local Board not later than fifteen (15)
calendar days following the end of each calendar
month. If the CITY fails to remit as provided
above, the CITY shall be additionally subject to
have this agreement terminated upon seventy-two
(72) hours notice in writing being served by the
UNION, provided the CITY fails to show satisfactory
proof that the required payments have been paid to
the Local Employees Benefit Board. The failure of
the CITY to comply with the applicable provisions

1 of the National Employees Benefit Agreement shall
2 also constitute a breach of the labor agreement.
3 B. The sum of fifth cents (50¢) per hour per man for
4 all hours paid on Maintenance Electrician and
5 Electrical Inspector employees only employed under
6 the terms of this agreement will be forwarded
7 monthly to a depository designated by the Trustees
8 of the Eighth District Electrical Pension Fund.
9 The CITY shall forward monthly, a payroll report on
10 a form prescribed by the Trust Fund Committee.
11 Such payment and payroll report shall be mailed to
12 reach the office of the collecting agency not later
13 than fifteen (15) calendar days following the end
14 of each calendar month. If the CITY fails to
15 remit, the CITY shall be additionally subject to
16 having this agreement terminated upon seventy-two
17 (72) hours notice in writing being served by the
18 UNION, provided the CITY fails to show satisfactory
19 proof that the required payments have been paid to
20 the designated depository.

21 5. PLUMBERS AND PLUMBING INSPECTORS:

- 22 A. Effective July 1, 1978, the City shall contribute
23 one dollar and ten cents (\$1.10) to the Plumbers
24 and Pipefitters National Pension Fund for each hour
25 or portion thereof for which a Plumber or Plumbing
26 Inspector receives pay.
27 B. The City agrees to contribute seventy-five cents
28 (75¢) for each hour a Plumber or Plumbing Inspector
29 works to the Plumbers' Health and Welfare Plan."
30 (Exhibit C3).

31 The Craft Council contract contains no sub-contracting section
32 and other sections that were contained in the Plumbers contract.
The sections were negotiated out. (Tr 270).

After receiving and reviewing the Craft Council contract, the
teamsters requested and received from the city certain additions
or corrections to the section on ERISA and the Western Conference
of Teamsters Pension Trust Fund. The Teamsters then signed the
contract. (TR 425, 333). The Laborers' union reviewed the craft
council contract, made their corrections to the contract and
signed it. (Tr 502, 503). The Machinists, Laborers and Teamsters
each thought the craft council contract was correct as corrected
and had no specific problems with their respective sections. Mr.
Williams agrees that the craft council contract is the agreement
reached at the bargaining table. (Tr 200, 251, 426, 502, 503).

Both Mr. Egan and Mr. Marzetta reviewed the new contract
before signing it. Mr. Marzetta told Mr. Egan that he did not

1 know why the City put the plumbers and inspectors in the craft
2 council contract. The I.B.E.W. signed the craft council contract
3 for the maintenance electricians, water plant operators and
4 traffic signal technicians but not for the inspectors because it
5 was the position of the IBEW, the inspectors were not part of the
6 craft council contract. (Tr 91, 102, 122, 123, 124, 126, 150, 612).
7 Mr. Egan knew the craft council was not correct; But, rather than
8 tie up the contract that was already a month past the expiration
9 date of the old contract, Mr. Egan signed for the maintenance
10 electricians. (Tr 123, 603, 125).

11 Mr. Marzetta states that:

- 12 a. The first he knew the inspectors were included in the
13 craft council contract was when Mr. Murr gave the I.B.E.W.
the final document from the City (Tr 601);
- 14 b. When he asked Mr. Williams about the special conditions,
15 he wanted items No. 4, 5, 6 and 7 from Schedule A of the
16 maintenance electricians that he marked with o.k.; He
17 was requesting the transfer of the special conditions
with no increase in the percentage rate of payment
and/or no increase in the amount of payment; The I.B.E.W.
18 did not open the special conditions rate of payment
and/or the amount of payment for negotiations; The
19 requested special conditions are in the craft council
contract but not the way requested; The monetary values
20 of the special conditions are correct in the new contract
and that was the only thing he was really interested in;
The requested special conditions are conglomerated with
21 the special condition for the inspectors. The inspectors
were added to the craft council contract without the
22 I.B.E.W. knowledge or approval; And the I.B.E.W. was
satisfied with the special conditions in the craft
23 council contract for the people they felt the contract
covered. (Tr 596, 600, 607, 610, 611, 612, 613, 614).

24 The I.B.E.W. did not take any actions to correct or re-draft
25 the craft council contract. (Tr 158, 159, 603, 608, 614). The
26 City made no inquiry of or demand of the I.B.E.W. to sign the
27 contract for the inspectors. (Tr 102, 255).

28 37. Mr. Martin states that:

- 29 a. The City never presented the plumbers with a copy of the
30 craft council contract (Tr 20);
- 31 b. During the summer 1978, from other union representatives,
32 he became aware that the craft council collective bargain-
ing agreement had been reached (Tr 74, 75); and

1 c. He first saw and read a copy of the craft council contract
2 about June 1979; at the same time, from other union
3 representatives, he was first informed that the contract
4 contained terms for the plumbers; He had no discussions
5 with other Union representatives about the terms of
6 craft council agreement relating to the plumbers between
7 the summer of 1978 and June 1979. (Tr 13, 65, 71, 74,
8 76).

9 Mr. Marzetta has the following exchange:

10 "[Waite]: Between August 1978 and April 18, 1979, the day
11 the letters were sent, isn't it true that you spoke to Mr.
12 Martin on various occasions?

13 [Marzetta]: I speak to Mr. Martin on every day.

14 [Waite]: Isn't it true that you spoke to Mr. Martin about
15 the provision concerning the plumbers and electricians in C-3
16 [The craft council contract]?

17 [Marzetta]: Between those dates?

18 [Waite]: Right.

19 [Marzetta]: I'm sure we probably discussed it several times,"
20 (Tr 129: 21-130:4).

21 The other unions and/or City made no inquiry of or demand of
22 the plumbers to sign the Craft Council contract. (Tr 13, 14, 35,
23 75, 225, 636). With the plumbers and inspectors signatures absent
24 from the Craft Council contract, Mr. Williams felt no obligation
25 to try to conclude an agreement that was acceptable to the parties
26 because he felt the plumbers and inspectors were bound by the
27 contract since initially they wanted to bargain as a member of the
28 Craft Council. (Tr 263, 264).

29 30. When Mr. Williams had not received the craft council contract
30 back from the unions in the time he expected, he called Mr. Murr.
31 (Tr 305, 331, 332). During one of the conversations between Mr.
32 Williams and Mr. Murr, the parties discussed that:

33 a. Two of the union representatives had not signed the
34 contract (Tr 301, 305, 331, 332, 259, 260);

35 b. Instead of holding up the contract, Mr. Williams would
36 submit the craft council contract to the City Commission
37 for approval; The City and the unions had a year to
38 iron out the differences and get the plumbers and inspec-
39 tors to sign the contract (Tr 260, 331, 332);

40 c. Mr. Murr did not know why the plumbers and inspectors
41 did not sign the contract but, he would look into it
42 (Tr 260, 305, 306, 331, 331); and

43 d. Mr. Murr asked for copies of the craft council contract
44 and the City agreed to provide three copies for each
45 union representative present at the table. (Tr 332, 366).

1 Mr. Murr states that the City never made a demand upon him to
2 get the plumbers and inspectors to sign the craft council contract
3 and that he did not know there were any problems. (Tr 175, 176).

4 Mr. Williams states that he was led to believe by Mr. Murr
5 there was a good possibility the plumbers and inspectors would
6 sign the contract. (Tr 391).

7 39. On August 14, 1978, the City Commission ratified the craft
8 council contract. (Tr 316, 321, 326) A memorandum to the City
9 Commission on the contract states the following:

10 * * * * *
11 ITEM Labor Agreement
12 INITIATED BY Staff
13 ACTION REQUESTED Ratify Agreement (City of Great Falls Pub-
14 lic Employees Craft Council)
15 PRESENTED BY Staff

16 C O M M E N T S

17 Public Employees Craft Council. The agreement culminated
18 over three months of negotiations.

19 The basic changes and revisions from the previous years'
20 agreement are:

21 * * * * *

22 [Page 2]

23 * * * * *

24 (1) Added Plumbers, Painters, Inspectors and Electricians to
25 this contract as members of the Craft Council.

26 * * * * * (Exhibit 18).

27 The City Commissioners were told that the plumbers and inspectors
28 ***participated in the negotiations, that there was a good
29 chance that we'd get them to sign; but even if they didn't sign
30 it, they participated in the negotiations and they would be bound
31 by it [craft council contract]." (Tr 386: 14-17). Some of the
32 Commission members remember that the settlement was made with all
unions involved. (Tr 316, 320, 321, 322, 325).

40. Mr. Williams delivered 30 copies of the signed contract to
Mr. Murr with instruction that there were three copies per union
representative. (Tr 386, 332, 129). Needing more copies of the
signed craft council contract for the membership, the Teamsters
had a stencil cut of the contract. The Teamsters also ran and
sold extra copies of the contract to the other unions. (Tr 426,

1 427, 428, 432, 417, 438). The Teamsters sold copies to the I.B.E.W.
2 but would not sell copies to the Plumbers because Mr. Martin would
3 not sign the craft council contract. (Tr 427, 438).

4 41. On April 18, 1979, the Plumbers wrote the following letter to
5 the City regarding the maintenance plumbers:

6 * * * * *
7 As per Article 8, Section 1 of the Agreement between the City
8 of Great Falls and Plumbers & Fitters Local #139, regarding
9 the Maintenance Plumbers, we are sending you this notice that
we desire to open the Agreement. Please contact me for a
meeting of a suitable date.

* * * * * (Exhibit C4).

10 On the same day the I.B.E.W. and Plumbers wrote the following
11 letter to the City:

12 * * * * *
13 As per the present agreement between the City of Great Falls,
14 Plumbers & Fitters Local #139 and I.B.E.W. Local #122, we are
officially notifying you that we desire to open the agreement,
15 as per Article XXIX. Please contact us for a suitable date
for a meeting regarding the Electrical and Plumbing Inspectors.

16 s/ Joseph J. Martin
17 s/ William Egan

* * * * * (Exhibit C5, D8).

18 42. In answer to the Plumbers and Inspectors letters of April 18,
19 1979, Mr. Williams had a meeting with Mr. Martin, Mr. Marzetta and
20 Mr. Egan on April 30, 1979. (Tr 37, 128, 402, 634). At the start
21 of the meeting Mr. Williams stated "I'm not here to bargain at
22 this time. I just want to know what you're asking for so * * *, I
23 can take it back to the City Manager." (Tr 37:5-7, 95, 103, 604,
24 634, 635, 644). The I.B.E.W. and Plumbers verbally proposed to the
25 City that:

- 26 a. The old maintenance plumbers contract (Exhibit C1),
27 Schedule A and wages equal to 85% of the downtown plumber
28 wage scale for the Plumbers contract starting July 1,
1978 (Exhibit C16, D19, Tr 67, 37, 70, 159, 160, 162,
634, 635); and
- 29 b. The old inspector contract (Exhibit C2), Schedule A and
30 wage equal to 120% of the average downtown plumbers and
31 electricians wage for the inspectors contract starting
July 1, 1978. (Exhibit C 16, D19, Tr 67, 37, 96, 159,
160, 604, 634, 635).

32 The I.B.E.W. and plumbers informed Mr. Williams that the wages

1 contained in the craft council contract were not acceptable. (Tr
2 128, 129, 402).

3
4 Mr. Williams states that:

- 5 a. He told the I.B.E.W. and Plumbers that we have an agreement
6 in the craft council contract (Tr 261, 265, 337, 339);
7 and
8 b. The I.B.E.W. and Plumbers said "If the money had been
9 better, we would have accepted the contract [the Craft
10 Council Contract, Exhibit C3]." (Tr 402; 23-24, 339).

11 Both Mr. Martin and Mr. Marzetta state that Mr. William
12 never said we were bound by the Craft Council contract. (Tr 96,
13 97, 635, 638).

14 43. Some time after the April 30th meeting, Mr. Williams called
15 Mr. Marzetta and rejected the I.B.E.W. and Plumbers proposal. (Tr
16 39, 40, 96, 103, 339). Mr. Marzetta told Mr. Williams to put the
17 City's rejection in writing. (Tr 103).

18 In a second phone call, Mr. Williams told Mr. Marzetta that
19 "****if the plumbers sign the [craft Council] contract that we
20 might be able to do something, or at least I'd try to do something
21 for *** the inspectors." (Tr 403; 12-14, 97, 394, 605). Mr.
22 Marzetta told Mr. Williams that he was in no position to negotiate
23 for the plumbers. (Tr 97, 605).

24 The City never took any steps to enforce the craft council
25 contract until April 1979. (Tr 159).

26 44. On June 11, 1979, the City informed Mr. Martin and Mr. Marzetta
27 by letters as follows (Tr 20, 341):

28 * * * * *

29 In our last conversation I expressed an opinion that the
30 Maintenance Plumbers and Inspectors were a party to the
31 negotiations with the Crafts Council last May thru July and
32 that they were included in the Crafts Council contract as of
33 July 1, 1979. I have discussed this position with legal
34 council as well as the City Commission, and we all agree that
35 this is the only acceptable position we have.

36 I would like to ask you once again to accept and honor
37 the agreement as negotiated. The employees that you represent
38 received a greater cents per hour increase than others repre-
39 sented by the Crafts Council and to agree to renegotiate
40 wages for two Plumbers and two Inspectors would not be fair

1 to the other 130 employees involved. Any other course of
2 action that you might choose would be grossly unfair, not
3 only to the other employees, but to the citizens of our
4 community as well. If you do not honor this contract that we
5 negotiated in good faith, the City of Great Falls will have
6 no other choice but to ask the courts to direct your compliance.
7 * * * * * (Exhibit C6, C9, D20).

8 Mr. Marzetta and Mr. Martin stated the above letter is the
9 first time the City indicated to them that they were bound by the
10 craft council contract. (Tr 103, 633, 635, 638).

11 46. On June 12, 1979, the City instituted court action against
12 the I.B.E.W. and Plumbers to force compliance with the Craft
13 Council contract. (Tr 346, 347).

14 47. On June 15, 1979, Mr. Martin wrote to the City in response to
15 the City's letter of June 11 as follows (Tr 21, 24):

16 * * * * *

17 I was surprised to hear that you think we had a contract for
18 the Plumbing Inspectors and the Maintenance Plumbers. From
19 the very start of negotiations last year, with the Craft
20 Council, I informed you and them that I was willing to sit in
21 on negotiations for the basic contract language only, and
22 probably would be willing to be bound by the basic contract,
23 but when it came to the Schedule "A", we would negotiate that
24 portion of the contract during the year. Throughout the year
25 I have contacted you, whenever I ran into you, and told you I
26 would be willing to negotiate the Schedule "A" which includes
27 certain provisions that pertain to the Plumbers and Inspectors,
28 and also wages. As recently as May 18, 1979, at the grievance
29 hearing, for Robert Merry and Dan Kline at the Civic Center,
30 prior to the hearing, I asked you when we would get together.
31 I don't know why you changed your opinion, when you have
32 known all along that we did not negotiate the wage rates in
the Craft Council contract. After the basic contract was
agreed to, I did not sit in on the wage negotiations for the
crafts, and informed everyone that the Inspectors and Maintenance
Plumbers had a year to go on their contract and you and
I could get together any time during the year to negotiate
the Schedule "A" and wages for them. When I didn't hear from
you, I notified you on April 18, 1978, as the contract provides,
that the Unions are opening the contracts. I haven't had any
contact from you, regarding the Plumbers and Inspectors
contracts since April 30, 1979, when you came in and discussed
the contract. At that meeting you asked the Unions what they
were requesting for wage increases and I informed you that
the Plumbers Union wanted to maintain the 85% wage rate which
is negotiated with the Associated Plumbing, Heating and
Cooling Contractors of Great Falls. This is the wage rate in
the contract at the present time. We then informed you that
we wanted to upgrade the wages of the Inspectors to 120% of
the average wage of the City Plumbers and Electricians. You
then informed William Egan, Monty Marzetta and myself that
you would take this back to the City Manager, but you were
not there to negotiate, at that time, and would get back with
us at a later date. It appears to me that it is very conveni-

1 ent to have a loss of memory, when it comes to certain things.
2 I am writing this to refresh your memory, and hope that you
3 will inform the City Manager and City Commissioner of the
4 facts as they did happen. I have a number of witnesses who
5 do recall what did happen at these meetings.

* * * * * [Emphasis in Exhibit]."

(Exhibit C7).

6 48. During the month of June 1979, the City wrote the following
7 memorandums to the City employees (Tr 25, 26, 29, 31):

* * * * *

8 LABOR PROBLEMS WITH THE INSPECTORS AND PLUMBERS UNIONS

9 Dear Fellow Employees:

10 By now you have read in the Tribune and watched on TV
11 what is being said about recent contract problems with the
12 Plumbers and Inspectors Unions. It is possible that you have
13 been provided information and have an understanding of what
14 is involved; however, I would like to personally tell you how
15 the City views the issues.

- 16 1. In the Spring of 1978, the Crafts Council requested that
17 all unions, representing Blue Collar Workers in the
18 City, be allowed to participate in the negotiations and
19 thereby arrive at a single Crafts Council contract. The
20 City agreed and business agents representing the Plumbers
21 and Inspectors attended and participated in the negotia-
22 tions during May, June and July of 1978. At the conclu-
23 sion of these negotiations both refused to sign the
24 agreement.
- 25 2. In the Spring of 1979, both Unions sent letters asking
26 the City to negotiate. The City refused because.
 - 27 A. A contract had already been negotiated for three
28 months and a majority (eight out of ten) of the
29 Unions accepted the City's last wage and fringe
30 benefit offer.
 - 31 B. By law, a "single Union" or "employer" cannot
32 withdraw or refuse to accept a contract arrived at
through consolidated bargaining, when a majority
of their group ratifies that agreement.
 - C. Approximately 130 City employees are bound by this
contract. It would not be fair for the City to
re-negotiate wages for two Plumbers and two Inspec-
tors when all other Unions and their workers agreed
to ratify the negotiated contract in 1978. It
would be grossly unfair for these Unions involving
four employees to refuse to accept the wages offered,
thereby forcing 130 employees to decide whether to
cross or not cross a picket line! You should also
know that the negotiated increase that other City
Employees (who belong to the Crafts Council) will
receive July 1, 1979 is \$.30/hr across the board.
When a formula devised by the Crafts Council is
applied to this \$.40/hr the actual increase to the
employees range from \$.38/hr for a Laborer to
\$.61/hr for a Plumber. When you add \$.61/hr to

\$9.61 for wages and \$1.10 for the Plumbers pension, you get \$11.32/hr plus all the other benefits including PERS, vacation, holidays, sick leave, etc."

3. On June 12th, the City asked the District Court to direct the Plumbers and Inspectors to honor the agreement with the Crafts Council in which they participated. [Emphasis in Exhibit]."

* * * * *

EFFECT ON BENEFITS SHOULD AN EMPLOYEE PARTICIPATE IN A STRIKE

1. All benefits including seniority and longevity are frozen and the participants' status will be the same as though they were on a leave without pay. No benefits will accrue during the period of absence.
2. Insurance premiums will be prorated and paid in total by the employee. Payments must be paid on or before the 30th of the month to insure continued coverage for the next month.
3. Vacations occurring during the strike that were requested and approved in January will be honored. No other vacations may be scheduled or taken during the strike. In the event that the City finds itself in an emergency situation, these vacations may be cancelled.
4. Any requests for sick leave during the strike must be accompanied by a Doctor's statement. All requests and Doctor's statements will be verified.

The purpose of this memo is to help you understand procedures and prevent unnecessary problems. It is not meant as a form of harassment, but rather as a means of providing information to you - our employees."

*SALARY AND BENEFIT STATEMENT

City of Great Falls

Name	Robert Markle	Date	June 1, 1979
Department	Park & Recreation		
Direct Compensation in annual salary			<u>\$19,989.00</u>
Direct City-paid Employee Benefits:			
Hospital/Medical Insurance	\$ 120.00		
FICA	\$1,225.00		
Public Employees' Retirement	\$1,239.00		
Industrial Accident Insurance	\$ 290.00		
Unemployment Insurance	\$ 60.00		
Other Plumber's Pension	\$2,268.00		
Total Direct Benefits			<u>\$ 5,222.00</u>
Indirect City-provided Employee Benefits:			
Vacation:			
120 hours accrued annually			<u>\$1,285.00</u>

1 Sick Leave:
 2 96 hours accrued annually \$1,028.00
 3 Holidays:
 4 80 hours accrued annually \$ 857.00
 5 Paid Breaks:
 6 115.2 hours accrued annually \$1,234.00
 7 Other:
 8 Total Indirect Benefits;
 9 (Non-productive hours) \$ 4,404.00
 10
 11 TOTAL ANNUAL SALARY AND BENEFITS \$25,211.00
 12
 13 TOTAL MONTHLY SALARY AND BENEFITS \$ 2,101.00"
 14 (Exhibit C8).

15 48. On June 22, 1979, the plumbers filed unfair labor practice
 16 #26-79 which states:

17 " * * * * *
 18 They refuse to bargain. This Local #139 office sent a Certified
 19 Letter on April 18, 1979 (copy enclosed), [Exhibit C4], and
 20 we have not received any response.

21 Violation of 39-31-401 (1) and (5) MCA.

22 (This is in regards to the Plumbing Maintenance Men Agreement.)"

23 On the same day, the Plumbers and I.B.E.W. filed unfair Labor
 24 Practice #27-79 which states:

25 " * * * * *
 26 They refuse to bargain. This Local #139 Office sent a Certi-
 27 fied Letter on April 18, 1979 (Copy enclosed), [Exhibit C5,
 28 D8], and we have received no response.

29 Violation of 39-31-401 (1) and (5) MCA.

30 (This is in regards to the Plumbing Inspector and Electrical
 31 Inspector Agreement.)"

32 49. During late June 1979, Mr. Williams made statements to the
 33 News Media about the cost of a Plumber to the City. The cost Mr.
 34 Williams set forth in the below Exhibit is the cost to the city
 35 but not all costs are required by the Craft Council contract. The
 36 wage cost and wage based benefits cost in the below Exhibit is
 37 calculated on the craft council contract. (Tr 341, 342, 345, 392,
 38 393).

	1978-79	1979-80
"PLUMBER		
<u>DIRECT COSTS</u>		
1. Wages	9.61	10.22
2. PERS (6.2%)	0.596	.624

3.	Union Pension	1.10	1.10
4.	FICA (6.13%)	.589	.626
5.	Workers Comp. (2.5%)	.24	.256
6.	Unemployment (.3)	.029	.031
7.	Insurance	.058	.058
		<u>12.222</u>	<u>12.925</u>
		<u>25,421.76</u>	<u>26,684</u>

INDIRECT COSTS

1.	Vacation	15-24 Days Per Year
2.	Holiday	10.5 Days Per Year
3.	Sick Leave	12 Days Per Year Unlimited Accumulation Plus 25% of Accumulated Sick Leave Paid as a Bonus When the Employee Retires or Terminates.

The negotiated increase that other City Employees (who belong to the Crafts Council) will receive July 1, 1979 is \$.40/hr across the board. When a formula devised by the Crafts Council is applied to this \$.50/hr the actual increase to the employees range from \$.38/hr for a Laborer to \$.61/hr for a Plumber."

(The underlined figures are hand written notes on the Exhibit, Exhibit D22).

Mr. Martin and Mr. Williams had several exchanges about the pay the Plumbers receive versus the cost to the City for a plumber. As part of the exchange, Mr. Williams writes the following to Mr. Martin (Tr 341):

" * * * * "

In response to your TEL/COM today, let me repeat that Channel Three was in error in saying that we were paying the Plumbers \$25,000 per year and had offered \$26,800. Our statement to Channel Three was that our direct costs for a Plumber was approximately \$25,000 for this year and \$26,800 for next year. The attached fact sheet provides a breakdown of the direct costs.

You state in our TEL/COM that you would accept this if the City would reduce it to writing and present it as an offer. Basically, this was the City's offer last July. Our position is that we have a contract with you now; however, if you would like to present the contract to your counsel for their authorization to accept it, please do. I am sure that an analysis of the attached fact sheet [Exhibit D22] will convince you that the figures quoted came from the contract.

" * * * * " (Exhibit D21).

50. Starting July 1, 1979, the City paid the plumbers and inspectors at a higher rate of pay. The Plumbers pension fund or health and welfare fund have accepted the City's payment to the fund.

1 Mr. Martin stated that the City can pay a higher rate of pay
2 because of a minimums clause in our old contract, Exhibit C1, and
3 the Plumbers pension fund will accept the City's payment based on
4 the hope we can negotiate a contract. (Tr 72, 72).

5 51. On August 1, 1979, the Plumbers filed the following grievance:

6 " * * * * *

7 I am filing this grievance [this part is not readable.
8 This line was marked with a magic marker by the City Manager.
9 Tr 348] installation of lawn sprinkler systems. I have
10 discussed this problem with Mr. Sullivan and he referred me
11 to Mr. Doyle Williams. Mr. Williams does not agree with me
12 in the work assignment and insists on using laborers to make
13 the pipe connections and install the sprinkler heads. This
14 work, in the past, has been done by the City Maintenance
15 Plumber, or contracted to a licensed plumbing shop. I am
16 enclosing a statement from the previous plumber, Robert
17 Schultz, to verify that the work was done that way in the
18 past.

19 The Plumbers Executive Board has also instructed me to
20 inform you that the City Maintenance plumber will not install
21 the anti-syphon valve unless he also does the connecting of
22 the pipe joints and installs the sprinkler heads.

23 Please notify me of the date and location of the meeting.

24 " * * * * *

25 The enclosed statement:

26 "TO WHOM IT MAY CONCERN:

27 During my employment, for the City of Great Falls Recreation
28 Department, I did all of the connecting of the pipe joints,
29 sprinkler heads, etc., unless the work was contracted to a
30 licensed plumbing shop. This work was then done by licensed
31 plumbers, I, also, did all the lay out of the entire sprinkler
32 system including location of sprinkler heads, and I installed
the service off of the main to the anti-syphon valve prior to
installing the entire system.

(Signed) Robert E. Schultz." (Exhibit D23).

52. Mr. Williams replied to the Plumber's Grievance on August 6,
1979, as follows (Tr 349):

" * * * * *

Chris Cherches, City Manager, has asked me to respond to
your grievance dated August 1, 1979. In your grievance you
stated that you were filing it under Article VI, Step 2.
Article VI in the Crafts Council contract is management's
rights; and the Crafts Council contract is the only mainte-
nance contract recognized by the City at this time. If you
wish to pursue this grievance, please do so under the Crafts
Council contract.

As far as your instructions to the City Plumbers concern-

1 ing what they can do or cannot do, perhaps it would be better
2 if you did not get involved with the management and direction
3 of City employees. If you feel the contract has been violated,
use the grievance procedure!

* * * * *

(Exhibit D24).

4 53. On August 7, 1979, Mr. Martin by letter resubmitted the
5 plumbers grievance of August 1, Exhibit D23, under Article VI,
6 step 2 of the maintenance plumbers agreement, Exhibit C1. (Exhibit
7 D25, Tr 249).

8 54. Mr. Martin filed another grievance under the maintenance
9 plumbers agreement on August 10, 1979, (Tr 349) as follows:

* * * * *

10 I am filing this grievance under Article 6, Step 2, regarding
11 the installation of lawn sprinkler systems. I have discussed
12 this problem with Mr. Doyle Williams and we were unable to
13 resolve this issue. The portion of the contract which Mr.
14 Murphy and Mr. Doyle Williams want the maintenance plumbers
to violate is under Schedule "A", Section 2. When the men
refused to violate the contract, Mr. Doyle Williams and Mr.
Able fired them.

15 Please notify me of the date and location of the meeting, as
16 specified in the contract, within five (5) days after notifi-
cation.

* * * * *

(Exhibit D26).

17 55. Mr. Williams replied to the plumbers grievance as follows:

* * * * *

18 This grievance, like the last one, has been filed under
19 the management's rights clause of the Crafts Council Contract
20 --the only Union Maintenance contract recognized by the City
21 at this time. If you want the City to honor the grievance
22 procedure, please use the correct contract, procedure and
article.

23 Concerning the dismissed plumbers, I called your office
24 on Friday, August 10, 1979 at approximately 4:00 P.M. You
were out and did not return my call. I will be available to
discuss this situation any time. Just call in advance to
make sure I'm here.

* * * * *

(Exhibit D27).

25 56. On August 28, 1979, Mr. Martin wrote to the City as follows:

26 "Re: Grievances: August 10, 1979
27 August 1, 1979

28 Dear Mr. Williams:

29 The purpose of this letter is to assure your clear understand-
30 ing as to the grievances referred to above. These grievances
31 were filed under the agreement entered into between the City
and the Plumbers and Fitters Local No. 139 in July of 1976,
32 which continues to be in force under Article VIII, Section 1.
As you are well aware, we have neither negotiated nor signed

1 any other agreement to date. These grievances are submitted
2 under Article VI, Step 2 of the 1976 Agreement, and alleged
3 violations of the contract provisions found in Schedule A of
4 said agreement.

5 With this understanding, I again ask that you notify me of
6 date and location of the meeting as specified in the contract,
7 within five (5) days after notification.

8 * * * * * (Exhibit D28).

9 57. Mr. Williams replied to Mr. Martin as follows:

10 "Ref: Your letter dated 8/28/79

11 Dear Joe,

12 Our position has not changed since you filed these
13 grievances on August 1st and 18th. Our case in the District
14 Court has been amended to include these grievances; why not
15 wait for the Court's decision before pursuing them?

16 * * * * * (Exhibit D29).

17 IV. MOTIONS

18 1. In answering the ULPs and at the hearing, the Defendant
19 motioned that "the Complaint fails to state sufficient facts, and
20 fails to state any claim or cause of action supporting a violation
21 as required by Montana law and therefore must be dismissed".

22 (Answer to ULP #26,27-1979, Tr 5, 276).

23 The Complainants argue by brief the following:

24 a. If the Defendant could not properly answer the charges,
25 the defendant should have filed a motion seeking a more
26 definite statement of the charges as provided for by
27 Board of Personnel Appeals Rule 24.26.100 ARM which
28 adopts the Attorney General's Model Rule 1-16.(2)-P5070
29 ARM.

30 b. Both of the charges were filed by union business agents,
31 lay persons, and they should not be expected to prepare
32 the charges with the detail a lawyer might use in a
33 civil complaint.

34 c. The Montana Supreme Court dealt with the complaint
35 notice requirements of the Administrative Procedure Act.
36 In Board of Trustees, Billings School District No. 2 vs
37 State of Montana ex rel Bd. of Personnel Appeals
38 P2d _____, 36 St. Reprtr 2311, 103 LRRM 2285 (1979), The
39 Court set forth the following guidelines when reviewing
40 the pleadings:

41 "The first issue presented by defendant is whether
42 BEA's complaint complied with the requirements of notice
43 for administrative hearings. Section 82-4209(1), R.C.M.
44 1947, [Sec. 2-4-601 MCA] of the Montana Administrative
45 Procedure Act provides that a party to a contested case
46 shall be given an opportunity for a hearing after reason-

1 able notice. Reasonable notice includes "a short and
2 plain statement of the matters asserted." Section
3 82-4209(2)(d), R.C.M. [Sec. 2-4-601(2)MCA] The District
4 maintains that it did not receive reasonable notice of
5 the charge of coercion because the complaint did not
6 state that the District had "coerced" its teachers, and
7 did not allege facts which would support such a charge.
8 The importance of pleadings in administrative
9 proceedings lies in the notice they impart to affected
10 parties of the issues to be litigated at the hearing.
11 Western Bank of Billings vs. Mont. St. Banking (1977),
12 Mont., 570 P.2d 1115 34 St. Rep. 1197; Davis,
13 Administrative Law Text (3rd ed. 1972), Sec. 9.02, pp.
14 196-197; Greco v. State Police Merit Board (Ill. C.A.
15 (1969), 105 Ill. App. 2d 186, 245 N.E.2d 99, 101. Thus
16 the pleadings are liberally construed to determine
17 whether the charged parties were given fair notice, 73
18 C.J.S. Sec. 120.p.439; Greco supra; Glenn v. Board of
19 County Com'rs, Sheridan County (Wyo. 1968), 440 P.2d 1,
20 4. Fair notice is given if a charged party having read
21 the pleadings should have been aware of the issues which
22 it had to defend. N.L.R.B. v. Johnson (6th Cir. 1963),
23 322 P.2d 216, 220, 54 LRRM 2136. See also, Glenn supra;
24 Deel Motors Inc v. Department of Commerce (Fla. C.A.
25 1971), 252 So. 2d 389."

26 At no time did the Defendant state surprise or lack of know-
27 ledge of the issue.

28 Because of no motion for a more definite statement, because
29 the charges do state the essence of the issues - They (the City)
30 refuse to bargain -and because I believe Defendant was well aware
31 of the issues, I cannot agree with the Defendant's motion to
32 dismiss because the charges were not specific.

33 2. At the completion of the Complainant's case, the Defendant
34 moved to dismiss the ULP's because more than six months had expired
35 prior to the filing of the charges. Section 39-31-404 MCA provides:

36 "No notice of hearing shall be issued based upon any
37 unfair labor practice more than 6 months before the filing of
38 the charge with the board.****"

39 Board of Personnel Appeals Rule 24.26.680 ARM provides:

40 "COMPLAINT (1) A complaint alleging that a person has
41 engaged in or is engaging in an unfair labor practice may be
42 filed by an employee, a group of employees, a labor organiza-
43 tion or a public employer within six months thereof."

44 Because the Board of Personnel Appeals has no case law involv-
45 ing section 39-31-404 MCA, I will look to the NLRA Section 10(b)
46 which provides:

1 "****That no complaint shall issue based upon any unfair
2 labor practice occurring more than six months prior to the
3 filing of the charge with the Board.****[Section 29 USCA
4 Section 160(b)]"

5 The United States Supreme Court in Local Lodge #1424 (Bryan
6 Manufacturing Company) vs. NLRB 362 US 411, 45 LRM 3212 (1960)
7 set forth the following:

8 "It is doubtless true that section 10(b) does not prevent
9 all use of evidence relating to events transpiring more than
10 six months before the filing and service of an unfair labor
11 practice charge. However, in applying rules of evidence as
12 to the admissibility of past events, due regard for the
13 purposes of section 10(b) requires that two different kinds
14 of situations be distinguished. The first is one where
15 occurrences within the six-month limitations period in and of
16 themselves may constitute, as a substantive matter, unfair
17 labor practices. There, earlier events may be utilized to
18 shed light on the true character of matters occurring within
19 the limitations period; and for that purpose section 10(b)
20 ordinarily does not bar such evidentiary use of anterior
21 events. [Footnote]. The second situation is that where
22 conduct occurring within the limitations period can be charged
23 to be an unfair labor practice only through reliance on an
24 earlier unfair labor practice. There the use of the earlier
25 unfair labor practice is not merely "evidentiary", since it
26 does not simply lay bare a putative current unfair labor
27 practice. Rather, it serves to cloak with illegality that
28 which was otherwise lawful. And where a complaint based upon
29 that earlier event is timebarred, to permit the event itself
30 to be so used in effect results in reviving a legally defunct
31 unfair labor practice.

32 *****
33 * * * * we think that permitting resort to the principle that
34 Section 10(b) is not a rule of evidence, in order to convert
35 what is otherwise legal into something illegal, would vitiate
36 the policies underlying that section. These policies are to
37 bar litigation over past events "after records have been
38 destroyed, witnesses have gone elsewhere, and recollections
39 of the events in question have become dim and confused," H.R.
40 Rep. No. 245, 80th Cong. 1st Sess. p.40, and of course to
41 stabilize existing bargaining relationships.

42 [Footnote]: The most frequently cited Board expression of
43 this principle is that found in Axelson Mfg. Co. 88 N.L.R.B.
44 761, 766, 25 LRM 1388:

45 "As I interpret the statute however, Section 10(b)
46 enacts a statute of limitations and not a rule of evidence.
47 It forbids the issuance of complaints and, consequently,
48 findings of violation of the statute in conduct not within
49 the 6 months' period. But it does not, as I construe it,
50 forbid the introduction of relevant evidence bearing on the
51 issue as to whether a violation has occurred during the 6
52 months' period. Events obscure, ambiguous, or even meaning-
53 less when viewed in isolation may, like the component parts
54 of an equation, become clear, definitive, and informative
55 when considered in relation to other action. Conduct, like
56 language, takes its meaning from the circumstances in which
57 it occurs. Congress can scarcely have intended that the
58 Board, in the performance of its duty to decide the validity

1 of conduct within the 6 months' period, should ignore reliable,
2 probative, and substantial evidence as to the meaning and the
3 nature of the conduct. Had such been the intent, it seems
reasonable to assume that it would have been stated.*****

4 The Fifth Circuit Court of Appeals in NLRB vs Auto Warehouse,
5 Inc., 571 F.2d 868, 90 LRM 2236 (1978) outlined the use of section
6 10(b) of the NLRA as follows:

7 "In teaching that Section 10(b) bars claims which must
8 reply upon earlier violations outside the period, Bryan
9 Manufacturing [supra] reasoned that the limitation embodied
10 in Section 10(b) would have little significance if it could
11 be circumvented by using any current event which would not
12 have come about but for an earlier incident alleged to be an
13 unfair labor practice as the basis to attack a time-barred
14 occurrence. Thus, in deciding whether a complaint makes
mere evidentiary use of events anterior to the Section 10(b)
period or whether it resurrects a defunct charge, the court
must keep in mind the purpose of the limitation: to prevent
persons from being brought to book on stale charges and to
promote industrial stability by allowing parties after the
time prescribed as reasonable to assess with certainty their
liability for past conduct.****

15 ****We consider the contention that an unfair labor practice
16 charge could be predicated upon an instance of enforcement
17 or implementation occurring within the Section 10(b) period.
18 To analyze this claim, we must initially determine when a
19 charge based on contract enforcement first could have been
20 brought. If the right to bring a charge first accrued at a
21 date outside the Section 10(b) period, we then must consider
22 whether the Board's alleged incident of enforcement within
23 the Section 10(b) period - Hudson's rebidding for his position -
24 was an act independent of the initial enforcement such that
25 assessing the legality of the rebidding does not depend upon
time-barred events.

26 ****Therefore, this case differs from one in which the Board
27 contends that a party, by some specific act, has failed to
28 meet an obligation, the existence of which is established by
29 circumstances present within the Section 10(b) period. In
30 the latter situation, the failure to meet the obligation with-
31 in the period constitutes an unfair labor practice complete
32 in itself within the Section 10(b) period. The most common
example of this type of unfair labor practice is a refusal to
bargain, which is actionable if an act of refusal took place
within the Section 10(b) period, even if earlier refusals took
place outside the period. See, e.g., NLRB v. Louisiana Bunkers
Inc., 409 F.2d 1295, 1299-1300, 70 LRM 3363 (5th Cir. 1969);
NLRB v. White Construction & Engineering Co., 204 F.2d 950,
952-53, 32 LRM 2198 (5th Cir. 1953). We have also applied
the continuing obligation analysis where a union on several
separate occasions refused to process grievances, Local
Union No. 12, United Rubber Workers v. NLRB, 368 F.2d 12, 15
n.2 63 LRM 2395 (5th Cir. 1956), cert. denied, 389 U.S.
837, 88 S.Ct. 53, 19 L.Ed.2d 99, 66 LRM 2306 (1967), and
where a company made continued rejections of applicants for
employment, each of which was for improper reasons, NLRB v.
Albritton Engineering Corp., 340 F.2d 281, 285, 58 LRM
2159 (5th Cir.) cert. denied, 382 U.S. 815, 86 S.Ct. 31, 15

1 L.Ed.2d 62, 60 LRRM 2233 (1965).

2 Independent violations of continuing obligations do not
3 exist where the illegality of the conduct charged cannot be
4 established without assessing events outside the Section
5 10(b) period. For example, an otherwise lawful refusal to
6 hire does not violate the Act because an applicant was
7 wrongfully discharged outside the Section 10(b) period,
8 since establishing the unlawful failure to hire would require
9 an assessment of the earlier unlawful discharge, NLRB v.
10 McCready & Sons, Inc., 482 F.2d 872, 83 LRRM 2674 (6th Cir.
11 1973). Picketing employees claiming status as unfair labor
12 practice strikers have been barred from relying on conduct
13 outside the Section 10(b) period where no meritorious charge
14 was filed within six months. Although a strike may continue
15 within the Section 10(b) period because of an earlier viola-
16 tion, the asserted justification for the strike in such
17 circumstances would necessarily depend upon whether conduct
18 outside the Section 10(b) period amounted to an unfair labor
19 practice. NLRB v. District 30, United Mine Workers, 422
20 F.2d 115, 121-22, 73 LRRM 2184 (6th Cir. 1969), cert. denied,
21 389 U.S. 959, 90 S.Ct. 2173, 26 L.Ed.2d 543, 74 LRRM 2420
22 (1970). ****[Emphasis added]"

23 A difference between the NLRA and Montana's Act must be
24 pointed out. The NLRA provides that "Any such proceeding shall
25 *** be conducted in accordance with the rules of evidence ***"
26 (NLRA Section 10(b), 29 USCA Section 160(b)) while Montana's Act
27 provides "In any hearing the board is not bound by the rules of
28 evidence prevailing in the courts". (Section 39-31 406(2) MCA).

29 The State of Oregon's State Public Employee Collective Bargain-
30 ing Law (SLL 47:233) has a section that requires "an injured party
31 alleging an unfair labor practice must file a written complaint
32 with the ERB [Employment Relations Board] not later than 180 days
33 following the alleged occurrence. CRS 243.672(4)." (100 LRRM at
34 3068). The Oregon Court of Appeals after citing Bryan Manufacturing,
35 supra, in Smith vs. Employment Division 509 P2d 1184, 100 LRRM
36 3067 stated:

37 "****the acts allegedly occurring within the 180-day
38 period, standing alone, constitute an unfair labor practice
39 if done with the requisite intent. Intent may be inferred
40 from the evidence petitioner attempted to offer. Therefore,
41 the statute of limitations aspect of CRS 243.672(4) is satis-
42 fied, and that statute does not act as a rule of evidence to
43 exclude the evidence in question."

44 I believe Section 39-31-404 MCA is a statute of Limitation on
45 unfair labor practice charges, and not a general rule to exclude

1 evidence that is more than 6 months old because of section
2 39-31-406(2) MCA.

3 The following questions must be asked about the Defendant's
4 motion:

- 5 a. When could the Complainant first file the charges in
6 this case? If the charges could have only been filed
7 within the 6 months before they were filed, the motion
8 must be denied.
- 9 b. Are the charges repeating and the gravamen are self con-
10 tained within the 6 months before the charges were
11 filed? If yes, the motion must be denied.
- 12 c. What is the effect on the charges of the evidence of
13 events that happen more than 6 months before the charges
14 were filed? If the evidence only sheds light on the true
15 character of matters occurring within the past 6 months
16 and not kindle a charge out of actions that happen more
17 than 6 months before the charges were filed, the motion
18 must be denied.

19 In answer to the first question, I find the charge is the
20 City refused to bargain and the City did not refuse to bargain
21 until some time after the meeting of April 30, 1979 (FF). The
22 charges were filed well within the 6 months after the City refused
23 to bargain. Therefore, the motion must be denied. Because the answer
24 to the first test mandates denial of the motion to dismiss, the second
25 and third tests need not be discussed.

26 V. DISCUSSION AND CONCLUSION OF LAW

27 A view of the federal court's positions on multibargaining
28 group was set forth by Administrative Law Judge in Brotherhood of
29 Teamsters and Auto Truck Drivers Local No. 70, International
30 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of
31 America and Granny Goose Foods, Inc.; Nabisco Inc.; Standard
32 Brands, Inc.; Sunshine Biscuits, Inc. 214 NLRB 902, 88 LRRM 439
(1947) as follows:

33 "Both multiunion and multiemployer bargaining, as the
Supreme Court has observed, has been widely recognized as an
effective way to create stability in collective-bargaining
relationships and a vital factor in the effectuation of the
national policy of promoting labor peace through strengthened
collective bargaining. NLRB vs. Truck Drivers Local 449, IBT

1 (Buffalo Linen Supply Co.) 353 U.S. 87, 39 LHRM 2603 (1957)."
2 (214 NLRB at 905).

3 The Board of Personnel Appeals, like the NLRB, is charged with a
4 duty to remove certain sources of strife.

5 "In order to promote public business by removing certain
6 recognized sources of strife and unrest, it is the policy of
7 the state of Montana to encourage the practice and procedure
8 of collective bargaining to arrive at friendly adjustment of
9 all disputes between public employers and their employees."
10 (Section 39-31-101 MCA).

11 In order to create stability, this Hearing Examiner cannot
12 perceive any reason why the formation of a multiunion and/or a
13 multiemployer bargaining group should not be governed by the same
14 rules.

15 The NLRB in York Transfer & Storage Co. 107 NLRB No. 47, 33
16 LHRM 1078 (1953) set forth the following rules on the formation of
17 a multiemployer bargaining unit:

18 "Under Board law, it is not a prerequisite for the
19 establishment of an association-wide or multi-employer unit
20 that there be evidence of an employer association with formal
21 organizational structure, or that the members delegate to the
22 association final authority to bind them, or that the associa-
23 tion membership be nonfluctuating. The settled criterion for
24 the inclusion of an employer in a multi-employer bargaining
25 unit is whether the employer unequivocally intends to be
26 bound in collective bargaining by group, rather than individual
27 action. Thus, participation by an employer in group bargaining
28 provides such evidence of the employer's intention." (Footnotes
29 omitted 33 LHRM at 1079).

30 From the above case, it is seen that substance more than form
31 governs. The all-important criterion for determining the existence
32 of group membership is evidence, especially conduct, evincing an
33 unequivocal intent to be bound in collective bargaining by group,
34 rather than individual action. Participation in group bargaining,
35 where it is understood that the action by the group binds all mem-
36 bers of the group, is given controlling consideration. Given very
37 little weight in the York Transfer case is evidence indicating
38 that there exists a formal organizational structure or that the
39 members formally delegated to the group the final authority to
40 bind the members.

41 In Kroger Co. 148 NLRB No. 69, 57 LHRM 1021 (1964), the NLRB

1 stated:

2 "We have repeatedly held that a multi-employer unit is
3 appropriate in circumstances such as are here present, even
4 though the employer may not have specifically delegated to an
5 employer group the authority to represent it in collective
6 bargaining or given the employer group the power to execute
7 final and binding agreements on its behalf, or where some of
8 the contracts have not been signed by all members of the
9 group. What is essential is that the employer member has
10 indicated from the outset an intention to be bound in collec-
11 tive bargaining by group rather than by individual action."
12 (Footnotes omitted).

13 From the above NLRB case, it is again seen that the main
14 question to be answered in these cases is, whether there is an
15 indication that the union or employer intended to be bound by
16 group, rather than individual action. Not to be considered are
17 the following questions: Whether the employer or union specific-
18 ally delegated to a group, authority to represent the individual
19 member in collective bargaining or authority to execute final and
20 binding agreements on its behalf? or, whether all members of the
21 group signed the contract?

22 If the individual employer or union evinced an intent at the
23 outset of negotiations to be bound by group action, then the
24 individual member will be bound by group, rather than individual
25 action.

26 In Plumber Local 525 (Reynolds Electrical & Engineering Co.)
27 171 NLRB 1607, 68 LRRM 1291 (1968), the Respondent Union's conduct
28 in seeking to withdraw from multi-union bargaining did not consti-
29 tute unlawful refusal to bargain, despite the fact that contractual
30 negotiations virtually had been completed. Evidence established
31 that neither employer nor interested unions assumed or understood
32 that multi-union committee had any firm authority to bind any
union. These facts were relevant: (a) When multi-union negotia-
tions for maintenance agreement were first held, union's represen-
tative was not present; (b) at subsequent negotiation, union's
representative specifically noted at outset that he was present as
an observer and not as member of multi-union committee.

1 The NLRB went on to hold that:

2 "****The Respondent's [union] bargaining conduct was not
3 such as reasonably to lead to the conclusion that it had become
4 committed to joint negotiations or in any way changed its prior
5 method of bargaining. The Respondent attended only a minority of
6 the joint meetings **** and significantly, unlike other unions,
7 did not initial any of the provisions agreed upon. Based on the
8 conduct of the parties on both sides of the bargaining table, it
9 seems clear to us that neither side assumed or understood that the
10 union committee had any firm authority to bind all of the interested
11 unions, and that in fact the unions were bargaining together only
12 for the sake of convenience and in the hope of achieving some
13 common arrangement suitable to all." (Emphasis added, 68 LRM at 1295)

14 The above NLRB case affirms the previously twice-mentioned
15 important criterion in cases of group bargaining, and based on the
16 facts of the case, found that there was no clear intent at the
17 outset to be bound.

18 The following physical evidence is indicative and illustrative
19 of the complainant's intent:

20 1. Physical Evidence indicating the Parties are bound:

- 21 a. Exhibit D12, Mr. Murr's copy of the coordinated bargaining
22 structure rules and notes of the meeting. (FF6).
23 b. Exhibit D31, Mr. Ferderer's notes of a craft council
24 meeting. (FF9).
25 c. Exhibit D16, Mr. Pottratz's letter to the City and Mr.
26 Williams notes. (FF11).
27 d. Exhibit D17, Mr. Williams' notes of May 16, 1978. (FF13).
28 e. Exhibits D1 and D13, the union proposal of May 16, 1978.
29 (FF13).
30 f. Exhibit D32, Mr. Ferderer's notes of May 30, 1978. (FF15).
31 g. Mr. Ball reading from his notes May 30, 1978. (FF15).
32 h. Mr. Pottratz reading from his notes of May 30, 1978.
(FF15):
i. Exhibit D33, Mr. Ferderer's notes of June 5, 1978.
(FF16).
j. Mr. Pottratz's reading from his notes of June 5, 1978.
(FF16).

- 1 k. Mr. Ball reading from his notes of June 5, 1978; (FF16).
- 2 l. Exhibit D33, Mr. Ferderer's notes of June 19, 1978.
- 3 (FF18).
- 4 m. Exhibit C12, Mr. Ferderer's notes of July 16, 1978.
- 5 (FF30).
- 6 n. Exhibit D14, Mr. Murr's markup. (FF35).
- 7 o. Mr. Martin attended half of the negotiations meetings.
- 8 Mr. Martin attended meetings on May 16, 22, 30, June 5,
- 9 19, 22, 23, July 5 and 17 but, not on June 12, 21, 26,
- 10 July 6, 7, 10, 18, 25, and 26.
- 11 p. Mr. Marzetta attended the majority of the negotiation
- 12 sessions including the sessions after July 17, 1978.
- 13 q. The lack of any physical evidence during negotiations or
- 14 in the final contract (Exh. C-3) indicating that the
- 15 plumbers and inspectors were not meant to be bound by
- 16 any final agreement. (FF35).
- 17 2. Physical evidence indicating the parties are not bound:
- 18 a. Exhibits C13, D7 and C14, notes of the July 26, 1978
- 19 meeting which has no wage scale listed for the plumbers
- 20 and inspectors (FF33).
- 21 b. Exhibit C10, Mr. Williams markup. (FF34).
- 22 3. Exhibit D7, Mr. Murr's notes of June 5, 1978, is unconvulsive
- 23 physical evidence. (FF).

24 The majority of the physical evidence indicates that the

25 complainants intended the plumbers and inspectors to be covered by

26 the craft council contract. I fully acknowledge the vast quantity

27 of testimony in conflict with the above physical evidence. I

28 choose to rely on the physical evidence because:

- 29 a. The passage of time has more effect on recollect-
- 30 tions, which become dim and confused, than on
- 31 physical evidence;
- 32 b. I do not believe the physical evidence is false or
- manufactured at the last minute; and

1 e. The physical evidence is not subject to change to
2 fit the current needs of one of the parties.

3 Also, many of the witnesses contradicted their own testimony
4 or were vague and shifting in their testimony. For example:

- 5 a. See Mr. Murr's testimony about Exhibit D12: (FF6).
6 b. See Mr. Murr's testimony about exhibits D1 and D13.
7 (FF13).
8 c. Compare Mr. Williams testimony about exhibit C18 to
9 Exhibit D17. (FF35).

10 Therefore all testimony in conflict with the physical evidence
11 is given no credibility.

12 Looking at Exhibit 33, Finding of Fact 18, Mr. Martin stated
13 "That if the City does not go along with his proposal re: union
14 security, he wants nothing to do with the craft council.". Mr.
15 Martin wanted the union security clause from the maintenance
16 plumbers contract which provided for a union hiring hall and union
17 dispatch. The union hiring hall procedure is favorable to the
18 union and not found in the union security clause of the craft
19 council contract. Looking at Finding of Fact 21, it seems that
20 Mr. Martin was having a disagreement with some of the other union
21 representatives. The exhibit and the testimony in Finding of Fact
22 21, provide a motive and understanding as to why Mr. Martin later
23 attempted to withdraw from the craft council. Mr. Martin was
24 unhappy with the City and some of the other unions as to the stand
25 on some of the articles. Therefore, Mr. Martin attempted to
26 withdraw from the craft council. The attempt comes too late to be
27 valid.

28 The NLRB has long held that multi-bargaining group is only
29 allowed by mutual consent. Carlson & Co., 54 NLRB 222; Canada
30 Dry Ginger Ale, 73 NLRB 460; Milk and Ice Cream Dealers, 94 NLRB
31 823. Looking at the notes of Mr. Ferderer, the reading of Mr.
32 Pottretz's notes and the reading of Mr. Ball's notes, it appears
33 that the City tentatively agreed and gave their consent to the

1 unions that the plumbers and inspectors could be part of the craft
2 council contract if the contract was for more than one-year.
3 (FF16). In Columbia Falls, ULP #25, 26, 27, and 36, 1976, the
4 Board of Personnel Appeals cited San Antonio Machine Corp. vs.
5 NLRB, 363 F2d 622, 62 LRRM 2674 (CA 5, 1966) and American Seating
6 Co. vs NLRB, 424 F2d 106, 73 LRRM 2996 (CA 5, 1970) and ruled the
7 employer violated the collective bargaining act by withdrawing of
8 previous agreed to provisions without good cause. If I agree the
9 plumbers and inspectors were not bound by the craft council contract,
10 I would be allowing the unions to withdraw that portion of the
11 tentative agreement reached on June 5, 1978 pertaining to the
12 parties who were to be bound by the ensuing negotiations. I would
13 also be in conflict with the following labor principle:

14 "Recognizing the foundation of a multibargaining group
15 is consensual, it follows that once the Company or Union
16 evidences an intention to no longer remain in a collective-
17 bargaining group, it will not be considered a part of the
18 unit. The same rules concerning the right to withdraw apply
19 to both employers and unions alike. However a company's or
20 union's withdrawal must be done at an appropriate time,
21 namely, before bargaining negotiations commence. Conversely,
22 a member of a multi-unit bargaining association violates the
23 Act [NLRA] if it withdraws from bargaining after negotiations
24 begin, absent special circumstances. In 1958, in the case of
25 Retail Associates, [120 NLRB No. 66A, 42 LRRM 1119] the Board
26 enunciated its approach to the matter of withdrawal of either
27 a union or employer from a multiemployer unit as follows:

28 The right of withdrawal by either a union or employer
29 from a multiemployer unit has never been held, for Board
30 purposes, to be free and uninhibited, or exercisable at
31 will or whim. For the Board to tolerate such inconstancy
32 or uncertainty in the scope of collective bargaining
units would be to neglect its function in delineating
appropriate units under Section 9, and to ignore the
fundamental purpose of the Act of fostering and maintain-
ing stability in bargaining relationships. Necessarily
under the Act, multiemployer bargaining units can be
accorded the sanction of the Board only insofar as they
rest in principle on a relatively stable foundation.
While mutual consent of the union and employers involved
is a basic ingredient supporting the appropriateness of
a multiemployer bargaining unit, the stability require-
ment of the Act dictates that reasonable controls limit
the parties as to the time and manner that withdrawal
will be permitted from an established multiemployer
bargaining unit. Thus, the Board has repeatedly held
over the years that the intention by a party to withdraw
must be unequivocal, and exercised at an appropriate
time. The decision to withdraw must contemplate a
sincere abandonment, with relative permanency, of the

1 multiemployer unit and the embracement of a different
2 course of bargaining on an individual-employer basis.
3 The element of good faith is a necessary requirement in
4 any such decision to withdraw, because of the unstabiliz-
5 ing and disrupting effect on multiemployer collective
6 bargaining which would result if such withdrawal were
7 permitted to be lightly made. [Footnotes omitted].

8 We would accordingly refuse to permit the withdrawal of
9 an employer or a union from a duly established multiem-
10 ployer bargaining unit, except upon adequate written
11 notice given prior to the date set by the contract for
12 modification, or to the agreed-upon date to begin the
13 multiemployer negotiations. Where actual bargaining
14 negotiations based on the existing multi-employer unit
15 have begun, we would not permit, except on mutual consent,
16 an abandonment of the unit upon which each side has
17 committed itself to the other, absent unusual circum-
18 stances." (Footnotes omitted, Teamsters Local No 70
19 (Granny Goose), Administrative Law Judge's Decision 214
20 NLRB at 905, 906).

21 From the above, I conclude that the City of Great Falls did
22 not violate sections 39-31-401(1) and (5) MCA by refusing to
23 bargain with Plumbers Union and I.B.E.W. Union for the employees
24 working as Plumbers and Inspectors. I conclude this because the
25 complainants are covered by and bound by the Craft Council Contract.

26 VI. RECOMMENDED ORDER

27 It is ordered that unfair labor practice charges #26, 27-1979,
28 combined, Plumbers and Fitters, Local #139 and I.B.E.W Local #122,
29 Complainants vs. City of Great Falls, Defendant be dismissed.

30 Dated this 17th day of April, 1981.

31 Board of Personnel Appeals

32 
33 RICK D. HODGE
34 Hearing Examiner

35 NOTE: As stated in Board of Personnel Appeals rule 24.16.584 ARM
36 Exceptions the parties shall have 20 days to file exceptions to